CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1945

No. 53

GANGE LUMBER COMPANY, APPELLANT,

vs.

RALPH ROWLEY AND DEPARTMENT OF LABOR AND INDUSTRIES OF THE STATE OF WASHINGTON

APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

FILED MARCH 30, 1945

SUPREME COURT OF THE UNITED STATES

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EMPLOYER MUST COMPLETE THIS REPORT BY FILLING IN AND SIGNING EMPLOYER'S SECTION BELOW. THEN MAIL REPORT AT ONCE DEPARTMENT OF LABOR AND INDUSTRIES, DISTRICT OFFICE.

S. F. No. 133. -42—150M. 2696. (SEE REVERSE SIDE FOR ADDRESS)

(TO BE USED BY DEPARTMENT ONLY)
Adjudged non-compensable except for Medical Aid bills allowable by law.

JAY OLINGER (STAMPED)
Supervisor of Industrial Insurance

By
Asst. Claim Agent

MEDICAL AID AWARDS	Amount	Computed	Date Notice Sent	Warrant No.

Claim No.
Firm No.
Ind. Ins. Cl.
Med. Aid Cl.
Cont. Non-Cont.

State of Washington
Department of Labor and Industries

REPORT OF ACCIDENT

Social Security No.

Firm or Employer's Name Gange Lumber Company

Address

NAME OF INJURED WORKMAN Ralph Rowley

ADDRESS 4821 Pacific Ave.

How long have you worked for this employer? 2 yrs. Wage per day 6.65

Place of birth Colorado Age 36 Height 5' 8" Weight 156

DATE ACCIDENT OCCURRED July 13, 1937 State hour of accident 3:30 p.m. A.M. P.M.

Give last date worked July 13, 1937 If you have returned to work give date

DESCRIBE THE ACCIDENT IN FULL: A Turned on switch on resaws while he was changing saws man caught rt. index, mid and rings fingers in saw.

State nature and dates of any previous injuries received by you no

Name of health or accident insurance companies or fraternal organizations with whom insured no monthly benefits

Were safeguards provided? yes Was machine or appliance in good repair? yes

Name of person under whose direction you were working

Give name of attending physician DR. THOMAS B. CURRAN

Give full name and address of your wife or husband (if married) Frances Rowley 4821 Pacific Ave.

Date and place of marriage Have you a marriage certificate?

Are you living together as husband and wife? Has a divorce complaint been filed? If so, has either an interlocutory or final decree been entered? Date of decree

(Specify which)

Name Your Children Under 18 Supported by You	Date of Birth Mo.	Day	Year	Name Your Children Under 18 Supported by You	Date of Birth Mo.	Day	Year
Barbara			1930				
Richard			1937				

Signed this 30th day of July, 1937 at Tacoma, Washington.

WORKMAN MAKING CLAIM SIGN FULL NAME HERE RALPH ROWLEY (S)
(Sign in ink)

If unable to write make your mark in presence of a witness. Signature of witness to mark
(Sign in ink)

All Questions Must Be Answered
WORKMAN'S REPORT

5

All

Interlocutory or final decree been entered ..... Date of decree .....
(Specify which)

Name Your Children Under 18 Supported by You	Date of Birth Mo.	Day	Year	Name Your Children Under 18 Supported by You	Date of Birth Mo.	Day	Year
Barbara			1930				
Richard			1937				

Signed this 30th day of July, 19 37 at Tacoma, Washington.

WORKMAN MAKING CLAIM SIGN FULL NAME HERE ☞ RALPH ROWLEY (S)
(Sign in ink)

If unable to write make your mark in presence of a witness. Signature of witness to mark .....
(Sign in ink)

All Questions Must Be Answered
EMPLOYER'S REPORT

EMPLOYER MUST COMPLETE THIS REPORT BY FILLING IN AND SIGNING EMPLOYER'S SECTION BELOW. THEN MAIL REPORT AT ONCE TO DEPARTMENT OF LABOR AND INDUSTRIES, DISTRICT OFFICE.
(SEE REVERSE SIDE FOR ADDRESS)

FIRM NUMBER OF EMPLOYER .....

FIRM NAME OF EMPLOYER Gange Lbr Address Chas. M. Clark, 320 Perkins Bldg.

Location of plant or place of work where accident occurred 3939 Rusten Way

Business of employer Sawmill (If engaged in construction work state particular kind) Give Industrial Insurance Class for this claim EH

Check in which department workman was employed: Construction ☐ Operation ☒ Repair ☐ On launched boat ☐

NAME OF INJURED WORKMAN R. ROWLEY

Social Security No. .....

Has he any financial interest in the business? .....

Date and hour of accident 7/13/37 ~~A.M.~~ P.M. Last day worked 7/13/37 Date returned to work ---

Was workman engaged in the regular course of his employment when injured? yes Occupation of workman resawyer

Did accident occur on your premises? yes If injured away from plant of employer give full particulars relating to the cause of the accident .....

Date and hour accident reported to you 7/13/37 ~~A.M.~~ P.M. To whom reported M. E. Gange Position foreman

Have you reason to oppose allowance of this claim? .....

Will this workman be kept on salary during his period of disability? .....

Have the hours worked and wages paid this workman been included in the monthly payrolls reported to this department? .....

Report how accident occurred:

A switch was thrown in to start resaw, Rowley grabbed at saw

Signed this 4th day of Aug. 19 37

Gange Lbr.
EMPLOYER

By M. E. Gange (S) Foreman
OFFICIAL POSITION
(Use ink)

Must Be Answered
N'S REPORT

Employer's name GANGE LUMBER COMPANY Address TACOMA, WASHINGTON

Workman's name RALPH ROWLEY Address 4821 Pacific Ave.

Date of accident July 13, 1937 DATE OF FIRST TREATMENT July 13, 1937

Describe in full the parts injured and mark upon the chart on the back of this report the site of injury, if arm or hand or leg state whether right or left rt. index, mid and ring fingers

DESCRIBE EXTERNAL EVIDENCE OF INJURY Chip fracture mid phalanx of both index and mid
Severance of flexor sublimis digitorum) fingers. of index and mid fingers. And
" " flexor profundus digitorum) extensive longitudi laceration over palmer side of all phalanxes of ring fingers.

Do you believe present condition or disability is result of above injury? .....

X-RAY FINDINGS (Strike one) Negative / Positive } Give treatment used Sutured tendons. Dermal to skin, all under local anesthesia.
Small Chips separated from shaft of middle phalanx of 1st and 2nd fingers.

Has he been previously treated for this injury? —

ur accident ? 11/13/37

Have you reason to oppose allowance of this claim?

Will this workman be kept on salary during his period of disability?

Have the hours worked and wages paid this workman been included in the monthly payrolls reported to this department?

Report how accident occurred:

A switch was thrown in to start resaw, Rowley grabbed at saw

Signed this 4th day of Aug. 1937

Gange Lbr.
EMPLOYER

By M. E. Gange (S) Foreman
OFFICIAL POSITION (Use ink)

All Questions Must Be Answered
PHYSICIAN'S REPORT

Employer's name GANGE LUMBER COMPANY Address TACOMA, WASHINGTON

Workman's name RALPH ROWLEY Address 4821 Pacific Ave.

Date of accident July 13, 1937 DATE OF FIRST TREATMENT July 13, 1937

Describe in full the parts injured and mark upon the chart on the back of this report the site of injury, if arm or hand or leg state whether right or left rt. index, mid and ring fingers

DESCRIBE EXTERNAL EVIDENCE OF INJURY Chip fracture mid phalanx of both index and mid
Severance of flexor sublimis digitorum) fingers. of index and mid fingers. And
" " flexor profundus digitorum) extensive longitudi laceration over palmer side of all phalanxes of ring fingers.

Do you believe present condition or disability is result of above injury?

X-RAY FINDINGS (Strike one) Negative / Positive } Give treatment used Sutured tendons. Dermal to skin, all under local anesthesia.
Small Chips separated from shaft of middle phalanx of 1st and 2nd fingers.

Has he been previously treated for this injury?

Is there any evidence of venereal disease? Tuberculosis?

Name and address of hospital to which patient was taken Not hospitalized.

ESTIMATE DURATION OF TIME LOSS FROM WORK 4-6 wks DATE PATIENT RESUMED WORK

Describe any previous injury received by patient no

This report can be accepted only when signed by a licensed physician.

Signed THOS. B. CURRAN (S)
DR. THOS B. CURRAN
(Sign in ink) Attending Physician

Address Perkins Building
Tacoma, Wash.

Date July 31, 1937 Rec'd Aug. 6, 1937

Memo by Chief Medical Adviser:

1

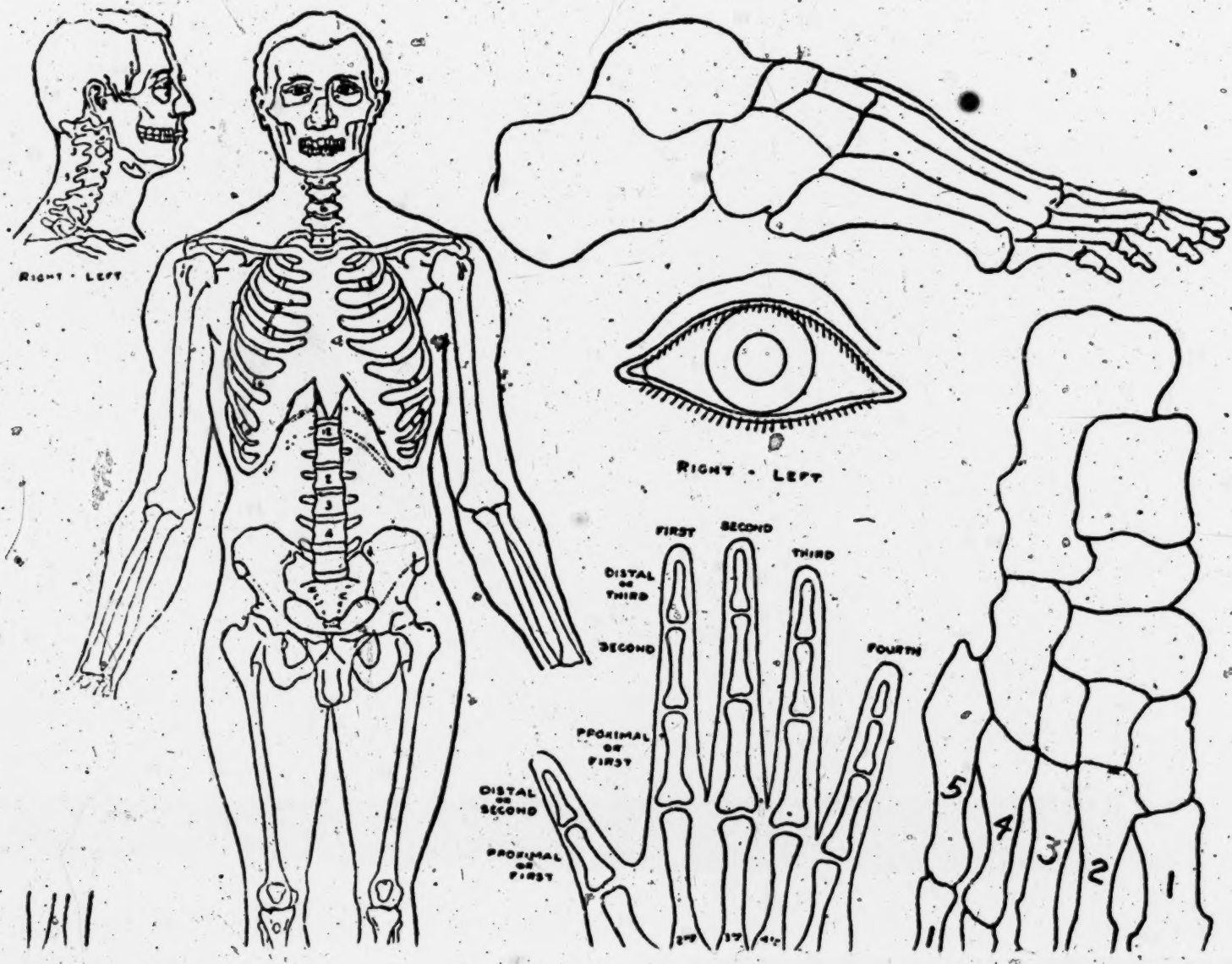
(Over)

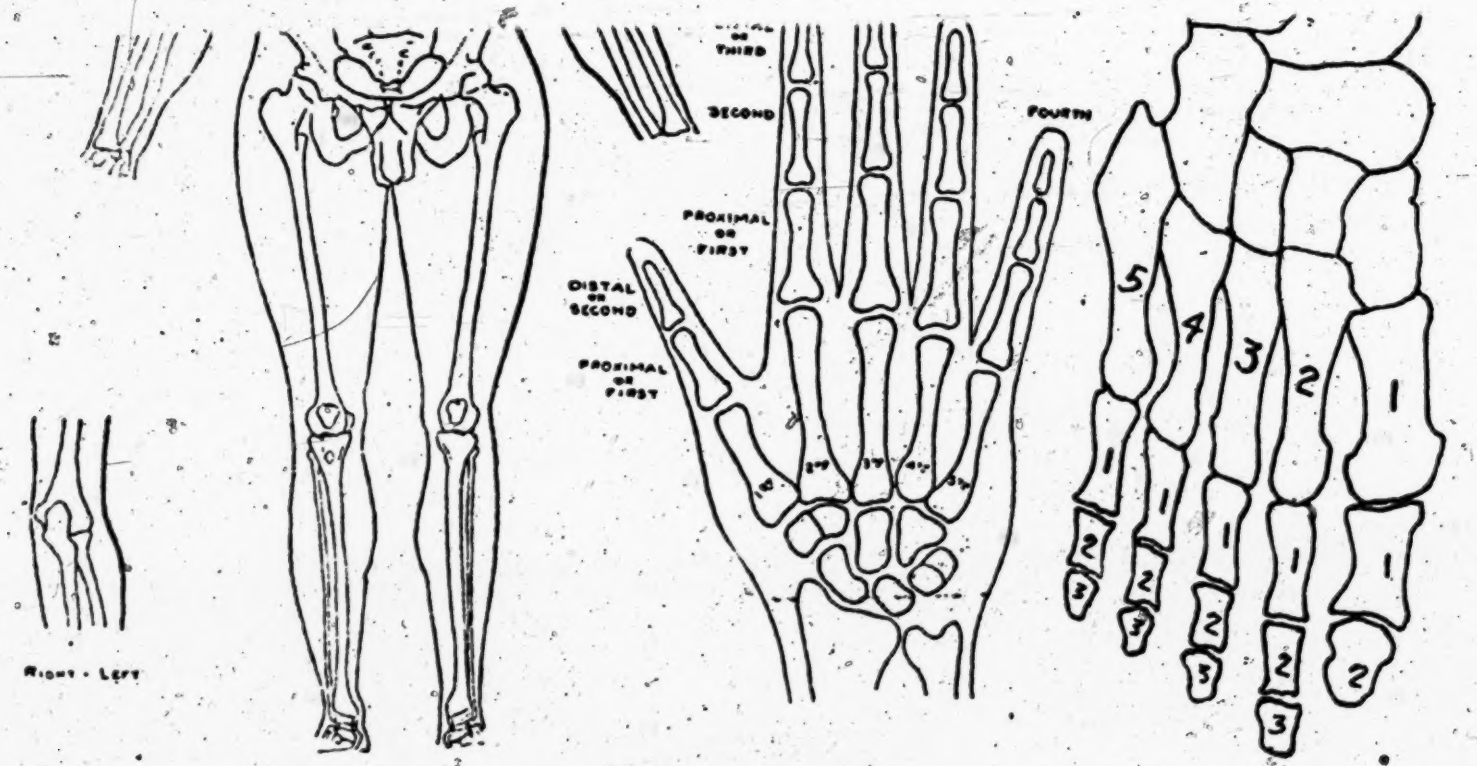
INSTRUCTIONS TO ATTENDING PHYSICIAN

IF THIS REPORT HAS BEEN FILLED OUT BY THE EMPLOYER SEND THIS REPORT TO DEPARTMENT OF LABOR AND INDUSTRIES, DISTRICT OFFICE. IF THE EMPLOYER HAS NOT MADE OUT REPORT SEND THIS TO HIM FOR THAT PURPOSE.

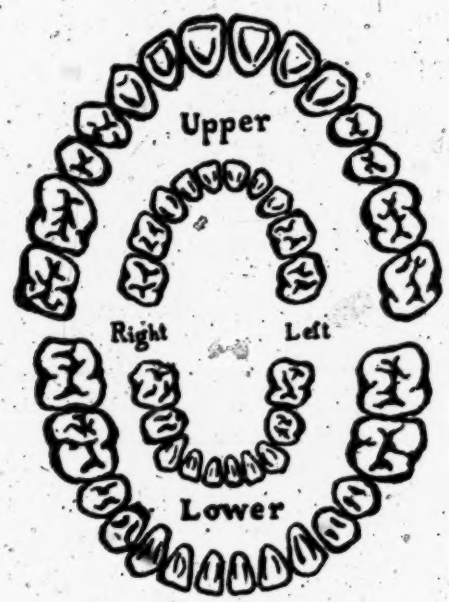
DISTRICT OFFICES

1318 Smith Tower Seattle	421 Perkins Bldg. Tacoma	30 Aldwell Bldg. Pt. Angeles	Finch Bldg. Aberdeen	Bremer Bldg. Bremerton
325 Herald Bldg. Bellingham	First National Bk. Bldg. Mt. Vernon	1-2 Blurock Bldg. Vancouver	P. O. Box 1003 Longview	717 Baker Bldg. Walla Walla
205 Commerce Bldg. Everett	501 Hutton Bldg. Spokane	220 Liberty Bldg. Yakima	Fuller-Quigg Bldg. Wenatchee	




RIGHT - LEFT
THIRD
SECOND
FOURTH
PROXIMAL OR FIRST
DISTAL OR SECOND
PROXIMAL OR FIRST
5
4
3
2
1

RIGHT-LEFT


Upper
Right
Left
Lower

[fol. 2] IN AND BEFORE THE SUPERVISOR OF INDUSTRIAL INSURANCE, DEPARTMENT OF LABOR AND INDUSTRIES, STATE OF WASHINGTON

FINAL SETTLEMENT

ORDER AND NOTICE

Copy

Firm Name: Gange Lbr. Co., % Chas. M. Clark, 320 Perkins Bldg., Tacoma, Wn.

Mailed 1-25-38, Department of Labor & Industries, Olympia.

Claimant: Ralph Rowley, 4821 Pacific Ave., Tacoma, Wn.

Claim No.	Firm No.	Class	Date Injured
813023	56397	10-2	7-13-37

On this date, the complete record of the above claim being presented to the Supervisor of Industrial Insurance, and he having carefully and thoroughly considered all matters contained therein, and you being hereby notified, now:

It is hereby ordered that this claim be closed with payments as follows:

Lump Sum Settlement of Claim:

Time loss, temporary total disability to As Paid No. days $——.

Permanent partial disability 5.76 $172.80.

Medical services will not be provided, nor bills therefore paid after —— ——, except if authorized and rendered prior to mailing date of this notice.

Warrant No. 928151. Mailed —— ——.

Notice sent employer: 1-19-38. Total $——.

Other payments made at this time:

Warrant Mailed —— ——.

Adjusted on PDN on Goering.

Dated: 1-19-38 jw.

At Olympia, Washington

Tacoma

Attending Physician —— ——.

Branch Office, Jay Olinger (Stamped) Supervisor of Industrial Insurance, by Underwood (s), Ass't. Claim Agent.

(These findings and decision hereon are official and effective when and only when signed by the personal or facsimile signature of the Supervisor of Industrial Insurance and the personal signature of the claim agent or other person duly authorized.)

[On margin] On the date stamped hereon, the original of which this is a copy, was deposited in the United States mail with postage prepaid and addressed to the claimant and/or other interested parties to their respective addresses as indicated hereon, by the person whose initials appear on said stamp. Warrant in payment of same will go forward to claimant in approximately 7 days from this date.

[fol. 3] IN AND BEFORE THE SUPERVISOR OF INDUSTRIAL INSURANCE, DEPARTMENT OF LABOR AND INDUSTRIES, STATE OF WASHINGTON

FINAL SETTLEMENT

ORDER AND NOTICE

Copy

Mailed 3-9-38, Department of Labor & Industries, Olympia, P (s).

Firm Name: Gange Lbr. Co., % Chas. M. Clark, 320 Perkins Bldg., Tacoma, Wn.

Claimant: Ralph Rowley, 4821 Pacific Ave., Tacoma, Wn.

Claim No.	Firm No.	Class	Date Injured
813028	55397	10-2	7-13-37

On this date, the complete record of the above claim being presented to the Supervisor of Industrial Insurance, and he having carefully and thoroughly considered all matters contained therein, and you being hereby notified, now:

It is hereby ordered that this claim be closed with payments as follows:

Lump Sum Settlement of Claim:

Time loss, temporary total disability to As Paid No. days $ ——.

Permanent partial disability Add'l Degrees 4.49, $134.70.

Medical services will not be provided, nor bills therefor paid after —— ——, except if authorized and rendered prior to mailing date of this notice.

Warrant No. 933281. Mailed —— ——.

Notice sent employer: 3-1-38. Total $—.

Other payments made at this time: Tvl. Ex. $1.55.

Warrant Mailed —— ——.

Adjusted on PH on Highmiller.

Dated: 3-1-38 jw.

At Olympia, Washington.

Attending Physician: —— ——.

Branch Office. Jay Olinger (Stamped) Supervisor of Industrial Insurance, by F. Gill (s), Ass't. Claim Agent.

(These findings and decision hereon are official and effective when and only when signed by the personal or facsimile signature of the Supervisor of Industrial Insurance and the personal signature of the claim agent or other person duly authorized.)

[On margin] On the date stamped hereon, the original of which this is a copy, was deposited in the United States mail with postage prepaid and addressed to the claimant and/or other interested parties to their respective addresses as indicated hereon, by the person whose initials appear on said stamp. Warrant in payment of same will go forward to claimant in approximately 7 days from this date.

——

[fol. 4] STATE OF WASHINGTON, DEPARTMENT OF LABOR AND INDUSTRIES, OLYMPIA

APPLICATION TO REOPEN CLAIM No. 813023

I hereby make application to reopen my claim and in support thereof furnish the following information:

Name of injured workman: Ralph Rowley.

Present address: 4006 N. 35th Tacoma.

Name of firm or employer at time of injury: Gange Lbr. Co.

Address: Tacoma.

Date of injury: July 13, 1936.

Date claim was closed: Summer or fall 1936.

For what purpose is the reopening requested: Condition is worse.

In what manner has your condition become worse since your claim was closed? Fingers are numb and stiff; tire easily and ache; are sore; can't close index finger; others are partially stiff; grip is weake

Have you had any other injuries since the above? No.

What work have you done and for whom, since your case was closed? State fully: Same as before.

What treatment have you had, and by what physicians, since claim was closed? No.

Are you working at present? Yes.

If not, give last date worked: —— ——.

If married, are you living with your wife and family? Yes.

If not, furnish proof of support of wife and children: ——.

If any children under sixteen years of age, give names and birthdates: Barbara, 13 yrs. old; Richard, 6 yrs. old.

Remarks: —— ——.

Date: March 13, 1943.

Sign here: Ralph Rowley (s).

STATEMENT BY EMPLOYER AT TIME OF INJURY

Has workman been employed since the date of accident? If not, state why: —— ——.

Give date: —— ——.

What kind of work? —— ——.

What wages? —— ——.

Has he been employed elsewhere to your knowledge? ——.

Has workman had other accidents or injuries? —— ——.

Has claimant been able to do full time work? —— ——.

If not, state fully: —— ——.

Do you recommend reopening of claim? —— ——.

For what purpose? —— ——.

3 yr. statutes has operated send O. & M. JHF (s) 3/24/43.

Date —— ——.

Employer: —— ——.

A report from your previous attending physician will facilitate action on your case and if you are still living in the same community that he does, please have the following section of this form filled in by him. If he is not available, notify the department.

STATEMENT BY ATTENDING PHYSICIAN

Have you examined claimant since claim was closed? —— ——. When? —— ——.

What is the claimant's condition, resulting from the injury, as compared with examination at the time you previously discharged him? —— ——.

Is the present condition due to the injury for which this claim was filed?

Do you recommend a reopening of the claim? —— ——.

For treatment? —— ——.

For time loss? —— ——. Or both? —— ——.

What treatment has been given by you since the claim was closed? —— ——.

Date: —— ——.

Rec'd Mar. 19, 1943.

—— ——, Attending Physician.

[fol. 5] IN AND BEFORE THE SUPERVISOR OF INDUSTRIAL INSURANCE, DEPARTMENT OF LABOR AND INDUSTRIES, STATE OF WASHINGTON

ORDER AND NOTICE

Gange Lumber So., % Chas. M. Clark, 320 Perkins Bldg., Tacoma, Washington.

Claimant: Ralph Rowley, % E. E. Stark, P. O. Box 985, Olympia, Washington.

Claim No.	Firm No.	Class	Date Injured
813023	55397	10-2	July 13, 1937

On this date, the complete record of the above claim being presented to the Supervisor of Industrial Insurance, and he having carefully and thoroughly considered all matters contained therein, and you being hereby notified, now:

It Is Hereby Ordered That

Following receipt of your application of March 13, a review of your claim file indicates that your claim was closed on March 1, 1938.

Section 7679-H of the Industrial Insurance Act provides in effect that should any claimant sustain an aggravation of

his disability any time within three years of the closing of his claim he may apply for further consideration.

You will note from the above that the Statute of Limitations has operated against your claim and the Department is without authority to take further action. Your claim will therefore remain closed in accordance with our final order of March 1, 1938.

Dated March 24, 1943-aa. At Olympia, Washington.

Mailed Mar. 24, 1943. Department of Labor & Industries, Olympia by AA (s).

Branch Office, John Shaughnesy, Supervisor of Industrial Insurance, by J. H. Fuller (s), Ass't. Claim Agent.

(These findings and decision hereon are official and effective when and only when signed by the personal or facsimile signature of the Supervisor of Industrial Insurance and the personal signature of the claim agent or other person duly authorized.)

[On margin] On the date stamped hereon, the original, of which this is a copy, was deposited in the United States mail with postage prepaid and addressed to the claimant and/or other interested parties to their respective addresses as indicated hereon, by the person whose initials appear on said stamp.

[fol. 6] APPLICATION FOR REHEARING

3-29-43. LMR (s)

March 26, 1943.

Joint Board Dept. Labor & Industries, Olympia, Washington

Re: Claim 813023. Ralph Rowley

GENTLEMEN:

I hereby appeal to the Joint Board for review and reversal of the Supervisor's order of March 24, 1943 in the above claim.

The Supervisor's order of March 24th states in part that "Section 7679-H of the Industrial Insurance Act provides—

that—aggravation—within three years of the closing of his claim (claimant) may apply for further consideration. (This) Statute of Limitations has operated against your claim."

My application for reopening of this claim was filed March 13, 1943, and the Supervisor's order was entered March 24, 1943. It is my belief and understanding that during this time the Section 7679-H of the Industrial Insurance Act provided that I might have five years from the effective date of that act to apply for reopening; that I am entitled to reopening of these claims. The fingers of my injured hand have become numb and stiff; the hand tires easily and aches; the fingers are sore; I cannot close my index finger; the others are partially stiff; the grip of my hand is weaker; the condition has become worse and aggravated since the claim was closed.

Therefore I respectfully request that the Supervisor's action be reversed and the claim be reopened for further treatment if indicated and for increased compensation.

Kindly address all mail % E. E. Stark, P. O. Box 985, Olympia, Washington.

(S.) Ralph Rowley.

E. E. Stark, Charles R. Carey.

Rec'd. March 29, 1943.

[fol. 7] IN AND BEFORE THE DEPARTMENT OF LABOR AND INDUSTRIES, STATE OF WASHINGTON

JOINT BOARD

Dated April 5, 1943.
At Olympia, Washington

ORDER AND NOTICE

Mr. Ralph Rowley, % E. E. Stark, P. O. Box 985, Olympia, Washington

Claimant: Ralph Rowley.

Claim No.	Firm No.	Class	Date Injured
813023	55397	10-2	7-13-37

On this date, the complete record of the above claim being presented to the Joint Board in Executive Session and the

Joint Board having carefully and thoroughly considered such record together with all evidence offered in the matter, and you being hereby notified, now:

It Is Hereby Ordered That

The application for rehearing be and hereby is denied; the Joint Board in its opinion considers that the Department has previously considered fully all matters raised by said application, and the Supervisor's order of March 24, 1943, is hereby confirmed.

cc to Mr. E. E. Stark.

cc to Gange Lumber Company, % Chas. M. Clark, 320 Perkins Building, Tacoma, Washington.

Joint Board, Mailed Apr. 7, 1943. RK (s).

Joint Board, Robert H. Harlin, Director; John Shaughnessey, Supervisor of Industrial Insurance; Jno. E. Morgan, Supervisor of Safety; (S.) L. M. Rickerd, Secretary.

LMR: md.

[fol. 8] IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR PIERCE COUNTY

No. 89046

RALPH ROWLEY, Applicant and Plaintiff

vs.

DEPARTMENT OF LABOR AND INDUSTRIES OF THE STATE OF WASHINGTON, Defendant

NOTICE OF APPEAL FROM ORDER OF JOINT BOARD OF THE DEPARTMENT OF LABOR AND INDUSTRIES DATED APRIL 5th, 1943 —Filed April 20, 1943.

To the Honorable Superior Court Judges of the Above-Entitled Court, and to the Honorable Robert *G.* Harlan, Director of the Department of Labor and Industries of the State of Washington:

You, And Each Of You, will please take notice that the applicant and plaintiff by virtue of Remington Revised Statutes of the State of Washington, feeling aggrieved by the decision and order of the Joint Board of the Depart-

ment of Labor and Industries of the State of Washington, dated April 5th, 1943, in the Matter of the Application of Ralph Rowley, Claim #813023, does hereby give notice of appeal from each and every part of said order or decision, and from all thereof, to the Superior Court of the State of Washington for Pierce County and does request a hearing denovo before the above entitled court, pursuant to the Statute laws of the State of Washington, made and provided therefor, and that the Joint Board's order be reversed.

Dated this 19th day of April, 1943.

Ralph Rowley, Plaintiff, by Allen & Carey, His Attorneys. Office and Post Office Address: 719 Second Ave. Bldg., Room 222, Seattle, King County, Washington.

Filed in Clerk's Office, Supreme Court, State of Washington, Dec. 19, 1944. Benj. T. Hart, Clerk, by Archie B. Stewart, Deputy.

[File endorsement omitted.]

[fol. 9] In Superior Court of Pierce County

[Title omitted]

No. 89046

Employer's Motion to Dismiss Plaintiff's Appeal—Filed October 27, 1943

Comes now the above named employer and moves the Court for an order dismissing the above entitled cause and appeal on the following grounds:

1. That the order of the Joint Board of the Department of Labor and Industries dated April 5, 1943, affirming the order of the Supervisor of Industrial Insurance dated March 24, 1943, denying the plaintiff's application to reopen his claim on the ground that said application and the reopening of said claim were barred by the provisions of Remington's Revised Statutes, Section 7679 (h) being Laws of 1911, Chapter 74, Section 5 (h), as amended by Laws of 1927, Chapter 310, Section 4, is in accordance with law.

2. That under the provisions of Remington's Revised Statutes, Section 7679 (h), plaintiff's right, if any, to reopening of his claim and additional compensation, on the alleged ground that his disability became aggravated after his claim was closed on March 1, 1938, expired by lapse of time prior to March 19, 1943, the date he filed his application for reopening, and said order of the Joint Board is therefore in accordance with law.

[fol. 10] 3. That said order of the Joint Board, rejecting plaintiff's contention that he was authorized by Laws of 1941, Chapter 209, Section 1, referred by petition to the people and adopted by them as Referendum No. 22 on November 3, 1942, which became effective on December 3, 1942, to apply for a reopening of his claim for aggravation as aforesaid, is in accordance with law.

4. That if Laws of 1941, Chapter 209, Section 1, adopted by the people as aforesaid, is construed as urged by plaintiff, such law is in violation of Article I, Section 3, and Article I, Section 23, of the Constitution of the State of Washington and is void.

5. That if said Laws of 1941, Chapter 209, Section 1, adopted by the people as aforesaid, is construed as urged by plaintiff, said law is in violation of Article I, Section 10, Clause 1, of the Constitution of the United States of America and of the Fourteenth Amendment to the Constitution of the United States of America and is void.

This motion is based on the records and files herein.

Dated at Tacoma, Washington this 22nd day of October, 1943.

T. J. Hanify, 802 Tacoma Building, Tacoma, Wash.; Grosscup, Morrow & Ambler, 910 Republic Bldg., Seattle, Wash.; L. B. Donley, 417-9 Finch Bldg., Aberdeen, Washington; Hulbert, Helsell & Paul, 1112 White Bldg., Seattle, Wash.; Little, Leader, LeSourd & Palmer, 820 White Bldg., Seattle, Wash.; Laube & Laughlin, 820 White Bldg., Seattle, Wash.; Attorneys for Employer, Gange Lumber Company.

[File endorsement omitted.]

NOTE: Affidavit of Service not included.

[fol. 11] IN SUPERIOR COURT OF PIERCE COUNTY

[Title omitted]

No. 89046

ORDER GRANTING EMPLOYER'S MOTION TO DISMISS PLAINTIFF'S APPEAL AND JUDGMENT OF DISMISSAL—Filed December 10, 1943.

This matter having come on for hearing on the 21st day of October, 1943, upon the employer's motion to dismiss plaintiff's appeal in the above matter, the plaintiff appearing by Allen & Carey, his attorneys, the defendant, Department of Labor and Industries of the State of Washington, appearing by Smith Troy, Attorney General and by L. E. O'Neill, Assistant Attorney General, its attorneys, and the employer, Gange Lumber Company, appearing by T. J. Hanify, and L. B. Donley, Grosscup, Morrow & Ambler, Hulbert, Helsell & Paul, Little, Leader, LeSourt & Palmer and Laube & Laughlin, its attorneys; and the Court having heard the argument of counsel and being fully advised in the premises; Now, therefore, it is,

Ordered, Adjudged and Decreed, that the employer's said motion to dismiss plaintiff's appeal be, and the same is hereby granted; and it is further,

Ordered, Adjudged and Decreed, that the plaintiff's appeal to this court be, and the same is hereby dismissed and that the decision of the Department herein be, and the same is hereby confirmed.

The plaintiff's exception thereto is hereby allowed.

[fol. 12] Done and Ordered In Open Court this 10th day of December, 1943.

E. F. Freeman, Judge.

Presented by T. J. Hanify, of Attorneys for Employer; L. E. O'Neill, Asst. Atty. Gen.; Smith Troy and L. E. O'Neill, of Attorneys for Defendant; Allen & Carey Attorneys for Plaintiff.

[File endorsement omitted.]

[fol. 13] IN SUPERIOR COURT OF PIERCE COUNTY

No. 89046

[Title omitted]

NOTICE OF APPEAL—Filed January 8, 1944

To Department of Labor and Industries of the State of Washington, defendant, and to Smith Troy, Attorney General, and L. E. O'Neill, Assistant Attorney General, attorneys for said defendant, and to Gange Lumber Company, a corporation, the Employer, and to T. J. Hanify, L. B. Donley; Grosscup, Morrow & Ambler; Hulbert, Helsell & Paul; Little, Leader, LeSourd & Palmer; and Laube & Laughlin, its attorneys:

Comes now the plaintiff, Ralph Rowley, by and through his attorneys of record and appeals to the Supreme Court of the State of Washington from the order granting Employer's motion to dismiss plaintiff's appeal and judgment of dismissal which was signed and entered by the Court on the 10th day of December, 1943.

The plaintiff hereby appeals from each and every part and portion of said order granting Employer's motion to dismiss plaintiff's appeal and judgment of dismissal and from all thereof and hereby gives notice of such appeal.

Dated this 7th day of January, 1944.

Allen & Carey, Attorneys for Plaintiff.

Office and Post Office Address of Attorneys for Plaintiff: Allen & Carey, 719 Second Avenue Building, Rooms 216-222, Seattle 4, Washington.

[fol. 14] Copy received Jan. 8, 1944. L. E. O'Neil, Asst. Atty. Gen.

Copy rec'd Jan. 7, 1944. T. J. Hanify; L. B. Donley; Grosscup, Morrow & Ambler; Hulbert, Helsell & Paul; Little, Leader, LeSourd and Palmer; Laube & Laughlin, Attys. for Employer.

[File endorsement omitted.]

[fol. 15] IN SUPREME COURT OF WASHINGTON

No. 29288

I. C. LANE, Plaintiff and Appellant,

vs.

DEPARTMENT OF LABOR AND INDUSTRIES OF THE STATE OF WASHINGTON, Defendant and Respondent, and Defiance Lumber Company, a Corporation, Employer and Respondent

No. 29289

I. C. LANE, Plaintiff and Appellant,

vs.

DEPARTMENT OF LABOR AND INDUSTRIES OF THE STATE OF WASHINGTON, Defendant and Respondent, and Gange Lumber Company, a Corporation, Employer and Respondent

No. 29290

RALPH ROWLEY, Plaintiff and Appellant,

vs.

DEPARTMENT OF LABOR AND INDUSTRIES OF THE STATE OF WASHINGTON, Defendant and Respondent, and Gange Lumber Company, a Corporation, Employer and Respondent

No. 29291

JOHN MOORE, Plaintiff and Respondent

vs.

[fol. 16] DEPARTMENT OF LABOR AND INDUSTRIES OF THE STATE OF WASHINGTON, Defendant, and Northwest Door Company, Employer and Appellant

Appeals from the Superior Court for Pierce County, Honorable Ernest F. Freeman and Honorable Ernest M. Card, Judges, Presiding

BRIEF OF EMPLOYERS—Filed February 15, 1944

General Statement of the Employer's Position

The employers contend (1) that those who enacted Referendum No. 22 did not intend it should apply retroactively

so as to allow reopening of claims barred by limitation of time when the Measure became effective, and that it therefore does not so apply; but (2) if it would so apply, then it is unconstitutional.

* * * * * * *

Constitutionality of Referendum No. 22

* * * * * * *

It is well settled that a statutory right which has once expired cannot be constitutionally revived.

* * * * * * *

After the *Campbell* and *Schwager* cases were decided, the case of *William Danzer & Co. v. Gulf & S. I. R. Co., supra,* 268 U. S. 633, 45 S. Ct. 612, 69 L. ed. 1126, came to the Federal Supreme Court.

* * * * * * *

The United States Supreme Court said in a unanimous opinion (at 268 U. S. 636, 637, 69 L. ed. 1128, 1129):

> [fol. 17] "Plaintiff's right to file his claim with the commission had expired several months before the passage of the Transportation Act. But, if the period of Federal control is to be excluded the complaint was filed within time. During the period between such expiration and the passage of the Transportation Act plaintiff had no right to file a claim with the Commission, and had no cause of action. *It is settled by the decisions of this court that the lapse of time not only barred the remedy, but also destroyed the liability of defendant to plaintiff. (Authority) On the expiration of the two-year period, it was as if liability had never existed.* * * *" (Emphasis ours.)

Then in discussing the earlier controversial case of Campbell v. Holt, the court continued:

> "We need not re-examine the doctrine of Campbell v. Holt, 115 U. S. 620, 20 L. ed. 483, 6 Sup. Ct. Rep. 209, as it is plain that case does not apply. That was an action on a contract for the recovery of money. By a state statute of limitations, the right of action had been

barred. The statute was repealed before the action was commenced. It was held that the action could be maintained, and that such repeal did not deprive the debtor of his property without due process of law, in violation of the 14th Amendment. The decision rests on the conception that the obligation of the debtor to pay was not destroyed by lapse of time, and that the Statute of Limitations *related to the remedy only*, and that the removal of the bar was not unconstitutional. The opinion distinguishes the case from suits to recover real and personal property. That case belonged to the class where statutory provisions fixing the time within which suits must be brought to enforce an existing cause of action are held to apply to the remedy only. But such provisions sometimes *constitute a part of the definition of a cause of action created by the same or another provision, and operate as a limitation upon liability.* Such, for example, are statutory causes of action for death by wrongful act (authority), and those arising under the Federal Employers' Liability Act (authority). This case belongs to the latter class. Section 206 (f) will not be construed retroactively *to create liability.* To give it that effect *would be to deprive defendant of its property without due process of law, in contravention of the 5th Amendment.* * * *" (Emphasis ours.)

* * * * * * *

The *right* of the plaintiffs in these cases to apply for a reopening of their claims expired completely. It was not within the constitutional power of the 1941 Legislature to revive that right, if it should be held that by Referendum [fol. 18] No. 22 they intended to do so.

* * * * * * *

While we believe that Referendum No. 22 was not intended to apply retroactively as urged by the plaintiffs, still if it should be construed to the contrary, then it is unconstitutional, for it is clear that an attempt to revive or recreate a right expired under the terms of a statute creating the right but also limiting the period for its assertion violates the due process clauses of the Federal and State Constitutions.

[File endorsement omitted.]

[fol. 19] IN SUPREME COURT OF WASHINGTON

[Titles omitted]

[fol. 20] EMPLOYERS' PETITION FOR REHEARING—Filed Sept. 27, 1944

* * * * * * * * *

II

Constitutionality of the Act

The majority opinion makes two points: (1) that it is not a violation of the due process clause of the Federal or State Constitution for the Legislature to remove the bar of limitations against the assertion of a right where the limitation statute relates only to the remedy and does not inhere in the right itself; and (2) that the limitation in this case relates only to the claimant's remedy.

* * * * * * * * *

In the instant case, the majority opinion mentions *Danzer & Co. v. Gulf & S. I. R. Co.*, 268 U. S. 633, 45 S. Ct. 612, 69 L. ed. 1126, where the United States Supreme Court held that the bar to a statutory right created by Congress could not be removed, in view of the 5th Amendment to the Constitution of the United States, since the right and the time limitation for assertion thereof were parts of the same statute and that the limitation was not a mere remedial matter but inhered in and was a part of the right itself, so that when the time expired the right failed.

* * * * * * * * *

[fol. 21] In the *Danzer* case it was held that a statutory right which had expired by lapse of time could not be recreated so that the one against whom the right had previously existed would have to respond in money. We see no substantial difference here.

* * * * * * * * *

If, however, the Court holds that the Legislature intended to revive claims already barred, then the act in that respect is unconstitutional under the rule of the *Danzer* case.

* * * * * * * * *

[File endorsement omitted.]

[fol. 22] IN SUPREME COURT OF WASHINGTON

[Titles omitted]

ORDER DENYING PETITION FOR REHEARING—Filed Oct. 4, 1944

The court having considered the petition of the employers for a rehearing herein,

It Is Ordered that the petition for rehearing be and it is hereby denied.

Dated this 4th day of October, 1944.

By the Court:

George B. Simpson, Chief Justice.

[File endorsement omitted.]

[fol. 23] IN SUPREME COURT OF WASHINGTON

No. 29288, No. 29289, No. 29290, No. 29291

Pierce County No. 89043, No. 89044, No. 89046, No. 89045

I. C. LANE, Appellant,

vs.

DEPARTMENT OF LABOR and INDUSTRIES OF THE STATE OF WASHINGTON and Defiance Lumber Company, a corporation, Employer, Respondents.

I. C. LANE, Appellant,

vs.

DEPARTMENT OF LABOR and INDUSTRIES OF THE STATE OF WASHINGTON and Gange Lumber Company, a corporation, Employer, Respondents.

RALPH ROWLEY, Appellant,

vs.

DEPARTMENT OF LABOR and INDUSTRIES OF THE STATE OF WASHINGTON and Gange Lumber Company, a corporation, Employer, Respondents.

JOHN MOORE, Respondent,

vs.

DEPARTMENT OF LABOR and INDUSTRIES OF THE STATE OF WASHINGTON, Defendant; Northwest Door Company, Employer, Appellant.

JUDGMENT—October 9, 1944

This cause having been heretofore submitted to the court, upon the transcript of the record of the Superior Court of Pierce County, and upon the argument of counsel, and the Court having fully considered the same and being fully advised in the premises, it is now, on this 9th day of October, A. D. 1944, on motion of Allen & Carey, of counsel for appellants Lane and Rowley and respondent Moore, considered, adjudged and decreed, that the judgments of the said Superior Court be, and the same are hereby reversed in the

Lane and Rowley cases and affirmed in the Moore case; and that the said I. C. Lane, Ralph Rowley and John Moore [fol. 24] have and recover of and from the said Department of Labor and Industries, Defiance Lumber Company, Gange Lumber Company and Northwest Door Company the costs of this action taxed and allowed at One hundred nineteen and 30/100 ($119.30) Dollars, and that execution issue therefor. And it is further ordered, that this cause be remitted to the said Superior Court for further proceedings, in accordance herewith.

[fol. 25] IN SUPERIOR COURT OF PIERCE COUNTY

No. 89046

RALPH ROWLEY, Plaintiff,

vs.

DEPARTMENT OF LABOR AND INDUSTRIES OF THE STATE OF WASHINGTON, Defendant, and Gange Lumber Company, a corportation, The employer

JUDGMENT ON REMITTITUR OF SUPREME COURT—Filed October 19, 1944

This cause coming on regularly for hearing in open court this 19th day of October, 1944, plaintiff appearing by Allen & Carey, his attorneys, the defendant by Smith Troy, Attorney General, and L. E. O'Neill, Assistant Attorney General, its attorneys, and the Employer by T. J. Hanify, one of its attorneys, and it appearing to the Court that an appeal to the Supreme Court of Washington was duly and regularly taken by the plaintiff from the judgment entered in the above entitled cause on the 10th day of December, 1943 and that, pursuant to such appeal, a judgment was entered by the Supreme Court of the State of Washington, on October 9, 1944 reversing said judgment of this Court, dated December 10, 1943, and remanding the cause to this Court for further proceedings, and it further appearing to the Court that the remitfitur of the Supreme Court upon its said judgment has been filed in the office of the clerk of this Court, and the Court being fully advised in the premises,

It is hereby Ordered, Adjudged and Decreed that the said judgment of this Court, entered on December 10, 1943, be, and the same is hereby vacated, set aside and held for nought, and

[fol. 26] It is further Ordered, Adjudged and Decreed that the decision of the Joint Board of the Department of Labor and Industries in the above entitled cause be and the same is hereby reversed, and that the above entitled cause be and the same is hereby remanded to the defendant, the Department of Labor and Industries of the State of Washington, and that said defendant be and it is hereby ordered to consider upon its merits, after the introduction of evidence at an appropriate hearing or hearings, the application of the plaintiff to the defendant in said cause for a reopening of his claim and for additional compensation, and, after such consideration, to enter an order either granting or denying said application, and if granting the same, then also readjusting the compensation to which the plaintiff may appear to be entitled; and

It is further Ordered, Adjudged and Decreed that the plaintiff have and recover judgment against the defendant, Department of Labor and Industries, for his costs and disbursements herein taxed in the amount of $12.50 and for an attorney's fee in the sum of $250.00.

Done In Open Court this 19th day of October, 1944.

E. F. Freeman, Judge.

Presented by: Charles R. Carey of Attorneys for Plaintiff.

Approved as to form and notice of presentation waived: Smith Troy, Attorney General; L. E. O'Neill, Assistant Attorney General, Attorneys for Defendant; T. J. Hanify, of Attorneys for Employer.

[File endorsement omitted.]

[fol. 27] State of Washington

Department of Labor and Industries

Joint Board

ORDER REMANDING TO SUPERVISOR OF INDUSTRIAL INSURANCE

Ralph Rowley, Claimant

Claim No. 813023

This matter comes before the Joint Board from the Superior Court of Pierce County where Judgment on Remittitur of Supreme Court was entered October 19, 1944.

Coming on for review of the entire record and file the Board concluded that the matter should be remanded to the Supervisor of Industrial Insurance to follow in accordance with the Court order and judgment.

Joint Board, Department of Labor Industries,
(Signed) Riley R. Zumwalt, Sr., Secretary.

10-30-44 RRZ:AN

[fol. 28] State of Washington

Department of Labor and Industries—Industrial Insurance Division

REPORT OF MEDICAL EXAMINATION

Name of patient, Ralph Rowley, Age 43, Claim No. 813032. Address, 4006 North 35th, Tacoma. Employer when injured, Gange L. mber Co. State who was present at examination, Ralph Rowley and E. C. Yoder, M. D. S. F. No. 1084-1-41-20M. 20945. Date of examination, October 28, 1944.

Examiners Please Note:

Please complete your report as soon as possible as compensation and/or treatment will be held up until this report is received.

History of Injury for which this claim is filed.

Ralph Rowley, an employee of the Gange Lumber Company, was injured on July 13, 1937. He sustained lacerations of the right index, middle and ring fingers on the palmar surface. On the index finger, both tendons were reported to have been severed and an oblique laceration coming through the proximal crease of the palmar surface. The same injury was sustained by the middle finger through an oblique laceration in which both tendons were reported severed, and there was an oblique laceration of the ring finger in which the tendons were not injured. These tendons were sutured up at the Western Clinic by Dr. G. J. Vanderberg. It was also reported that a small chip of bone was involved in the middle phalanx of the index and middle fingers, so that, in both the ring and middle fingers the sublimus and profundis tendons were lacerated and a small fragment of bone was chipped from the middle phalanx palmar surface. After being sutured at the Clinic, the patient was sent to St. Joseph's Hos-

History of previous injuries or diseases.

Treatment received for present injury.

Work record since present injury.

Present complaints.

pital where he remained for about five days and he was off work for a period of about thirteen weeks. A settlement was made at that time which he finally took but he does not remember the amount. He has been working ever since this period.

His complaints now are:

Findings of examination.

1. Pain and s-iffening during the cold weather in all three fingers, especially the index and middle fingers.

2. Unable to grasp tools tightly with index and middle fingers because the index finger does not completely extend or completely flex.

3. There is considerable thickening of the skin at the site of the old scar and hardening in this area. The ring finger seems to work perfectly.

Diagnosis.

General Examination: Patient is 43 years of age; married with two children. He is 5′ 7½″ tall, weight is 156 lbs. General appearance is healthy. Examination shows his blood pressure is 130/80. Tonsils appear to be chronically inflamed. Teeth are in fairly good condition, somewhat worn off. Examination of head, chest and abdomen is negative. Examination of the rectum shows the prostate is about normal in size, otherwise negative. [fol. 29] Reflexes are normal. Wasserman report was four plus; urine examination negative except for two plus pus.

Conclusions:

Examination of the fingers of the right hand shows that the index finger action is hampered by a contracture of the scar on the palmar surface which holds it slightly bent and prevents complete extension of the finger, also prevents complete flextion. The fin-

1. Is further treatment indicated? If so, what?

ger comes down to almost a tight fist but not as far as it normally should, lacking about 10 to 15% of this motion. Also lacks about 5 to 8% from complete extension. The tendons are apparently held by scar tissue and the contracture shows up in the scar of the skin which is somewhat thickened and much harder than normal palmar skin. The middle finger has less disability, practically completely flexes and extends to about eight degrees from complete extension. The ring finger is fairly normal in action and motion. X-ray of the fingers is practically negative except a very slight change in the outline of the mid phalanx of the index finger can be noted.

2. When can patient return to work?

Conclusions: There is considerable permanent partial disability in this hand. I think treatment was adequate, the suturing apparently held but there was some contracture of the scar. This is a very difficult place for tendon suture. The time loss was apparently adequate. A PPD of 40% of the normal hand would be liberal and justified in this case, and a rough estimate is all that can be given. The difference in the amount of PPD mentioned above and the amount which has already been paid in this case is justified because of aggravation of the contracture and scarring which has been mentioned above.

3. What is the permanent partial disability expressed in terms of percentage as compared to the loss of the member at nearest point of amputation?

(S.) F. C. Yoder, M. D.,
Signature of
Examiner.

G: Pay on this JF (s) 11/25/44
Rec'd Nov. 9, 1944 Tacoma, Wash.

[fol. 30] IN AND BEFORE THE SUPERVISOR OF INDUSTRIAL INSURANCE, DEPARTMENT OF LABOR AND INDUSTRIES, STATE OF WASHINGTON

ORDER AND NOTICE TO REOPEN CLAIM

Firm Name: Gange Lumber Co., 320 Perkins Bldg., Tacoma, Wash.

Claimant: Ralph Rowley, % E. E. Stark, P. O. Box 985, Olympia, Wn.

Claim No.	Firm No.	Class	Date Injured
813023	55397	10-2	7/13/37

On this date, the complete record of the above claim being presented to the Supervisor of Industrial Insurance, and he having carefully and thoroughly considered all matters contained therein, and you being hereby notified, now:

It is hereby ordered that the above numbered claim is REOPENED effective this date for time loss as paid ——— for paying $460.50 additional ——— permanent partial disability for treatment.

The reopening was recommended by Miles Gilbert, Ass't Claim Agent On Jt. Bd.

Notify this department at once if for any reason in your opinion action is in error or charged to the wrong class.

Dated November 25, 1944 om.

At Olympia, Washington. Branch Office TAC.

Attending Physician John Shaughnesy,

Supervisor of Industrial Insurance.
By M. Gilbert (s)
Ass't. Claim Agent.

Mailed: Nov. 25, 1944

Department of Labor and Industries
Olympia

by LM (s).

(These findings and decision hereon are official and effective when and only when signed by the personal or facsimile signature of the Supervisor of Industrial Insurance and the personal signature of the claim agent or other person duly authorized.)

[fol. 31] IN AND BEFORE THE JOINT BOARD OF THE DEPARTMENT OF LABOR AND INDUSTRIES OF THE STATE OF WASHINGTON

Claim No. 813023

In the Matter of the Application of Ralph Rowley for Reopening of his Claim and for Additional Compensation

EMPLOYER'S APPLICATION FOR REHEARING

Comes now Gange Lumber Company, a corporation, the employer affected by the order herein of the Supervisor of Industrial Insurance dated November 25, 1944, and respectfully shows the Joint Board:

1. That the above named claimant suffered an injury in extrahazardous employment on July 13, 1939 while in the employ of your petitioner on account of which he filed a claim with the Supervisor of Industrial Insurance for compensation under the Workmen's Compensation Act of the State of Washington; that by an order of the Supervisor of Industrial Insurance dated March 1, 1938, said claim was allowed and was closed with an award for the permanent partial disability suffered by the claimant as a result of said injury; that on July 13, 1937 and at all times thereafter until December 3, 1942, the Workmen's Compensation Act of the State of Washington (Laws of Washington, 1929, Chapter 138, Section 2 (h)), Rem. Rev. Stat., Section 7679 (h)) required that an application to reopen claimant's said claim on account of aggravation of his disability resulting from said injury and occurring after said closure of his claim, be filed, if at all, within three years after said closure, viz., within three years after March 1, 1938; that no application for such reopening was filed by claimant within said three-year period, nor at all until the claimant's application hereinafter mentioned was filed on March 19, 1943, and that the claimant's right to apply for reopening of his claim on account of any aggravation of his disability became barred and expired by lapse of time at the close of said three-year period.

Rec'd Nov. 27, 1944.

[fol. 32] 2. That Laws of Washington, 1941, Chapter 209, Section 1 (Rem. Rev. Stat., 1941 Supp., Section 7679 (h)), hereinafter called "the 1941 Act," became effective on

December 3, 1942; that said Act, as interpreted by the Supreme Court of the State of Washington in *Lane v. Department of Labor and Industries*, 121 Wash. Dec. (No. 11) 395, was intended to permit reopening of any industrial insurance claim theretofore closed, and whether or not the right to reopening thereof had theretofore expired by lapse of time, upon application for such reopening filed within five years after the effective date of said Act; that thereafter, on March 19, 1943, the above named claimant filed his application with the Supervisor of Industrial Insurance to reopen his claim and to award him additional compensation on the alleged ground that his disability had become aggravated after his claim was closed on March 1, 1938; that said Supervisor, by his order dated March 24, 1945, rejected said application upon the ground that the right to apply for reopening of said claim had become barred under the provisions of Rem. Rev. Stat., Section 7679 (h).

3. That on March 29, 1943, the claimant filed his application for rehearing by the above entitled Joint Board of the Supervisor's said order of March 24, 1943, contending that the 1941 Act operated to permit reopening of claimant's said claim notwithstanding that the right to apply for such reopening had become barred under the provisions of Rem. Rev. Stat., Section 7679 (h); that on April 5, 1943, the Joint Board entered its order denying said application and sustaining the Supervisor's said action, from which order the claimant duly appealed to the Superior Court of the State of Washington for Pierce County in its Cause No. 89046; that your petitioner, as the interested and affected employer in said proceeding and as provided by law, duly and regularly appeared as a party in said Court and Cause and [fol. 33] filed its motion therein for a dismissal of said Cause on the grounds that claimant's right to apply for reopening had expired by lapse of time as aforesaid, that the action of the Supervisor in rejecting claimant's said application for reopening and the action of the Joint Board in sustaining the Supervisor's decision were in accordance with law, that the 1941 Act was not intended to permit reopening of a barrel claim as urged by the claimant but that if said Act was so intended and so applied, it was to that extent in violation of the 14th Amendment to the Constitution of the United States and was unconstitutional and void in its application to your petitioner.

4. That judgment was thereafter entered by said Superior Court, on December 10, 1943, granting petitioner's said motion and dismissing claimant's appeal to said Court, from which judgment claimant appealed to the Supreme Court of the State of Washington in its Cause No. 29290; that claimant's said appeal was consolidated for hearing and decision with three other appeals pending in said Supreme Court and involving the same issue; that upon said appeal your petitioner contended that the 1941 Act was not intended to permit reopening of barred claims as urged by claimant but that if it was so intended and if it so applied, it was in violation of the 14th Amendment to the Constitution of the United States and was void as aforesaid; that thereafter, on August 30, 1944, the Supreme Court of the State of Washington filed its opinion in said consolidated causes (*Lane v. Department of Labor and Industries*, 121 Wash. Dec. (No. 11) 395) holding that the 1941 Act was intended to apply to barred claims as urged by claimant and that said Act was not unconstitutional as contended by your petitioner.

5. That thereafter your petitioner duly filed its petition to said Supreme Court for rehearing of its said decision, [fol. 34] which petition was denied by order of said Supreme Court dated October 4, 1944 (*Lane v. Department of Labor and Industries*, 121 Wash. Dec. (No. 16) 554), and judgment was thereafter entered, on October 9, 1944, by said Supreme Court remanding this cause and claim to the Superior Court of the State of Washington for Pierce County for further proceedings not inconsistent with said decision; that thereafter, on October 19, 1944, judgment was entered by said Superior Court reversing the aforesaid order of the Joint Board dated April 5, 1943 and directing the Department of Labor and Industries to consider claimant's said application for reopening on its merits and, after such consideration, to enter an order granting or denying said application, and if granting the same, to award to the claimant the additional compensation to which he might appear to be entitled; and that thereafter the Joint Board entered its order directing the Supervisor of Industrial Insurance to comply with said judgment of the Superior Court.

6. That thereafter, the Supervisor of Industrial Insurance, having caused an investigation to be made of the extent of the claimant's permanent partial disability, and

having determined that said disability had become aggravated after the claimant's claim was closed on March 1, 1938, entered an order dated November 25, 1944 reopening the claimant's said claim and awarding him additional compensation on account of the aggravation of said disability.

7. That, notwithstanding the aforesaid decision of the Supreme Court of the State of Washington, the 1941 Act, as interpreted by said Supreme Court as aforesaid, and said order of the Supervisor of Industrial Insurance dated November 25, 1944 entered pursuant thereto, insofar as said Act and order provide for an award to the claimant although his right to apply for or receive such an award had once [fol. 35] become barred, and insofar as said Act and order require the amount of such award to be charged to your petitioner's cost experience under said Workmen's Compensation Act, constitute a taking of the property of your petitioner without due process of law and deny your petitioner the equal protection of the laws in violation of the 14th Amendment to the Constitution of the United States and are void.

Wherefore, your petitioner, deeming itself aggrieved by said order of the Supervisor of Industrial Insurance dated November 25, 1944, and believing the same and the award directed thereby to be unjust and unlawful, respectfully petitions that the Joint Board grant a rehearing of said order and, after such rehearing, that the Joint Board enter an order reversing said order of the Supervisor of Industrial Insurance and directing that the claimant's said application for reopening of his claim be dismissed.

T. J. Hanify (s); Grosscup, Morrow & Ambler (s); L. B. Donley (s); Hulbert, Helsell & Paul (s); Little, Leader, LeSourd & Palmer (s); Laube & Laughlin, Attorneys for Petitioner, Gange Lumber Company.

Address: 812 Hoge Building, Seattle 4, Washington.

[fol. 36] IN AND BEFORE THE DEPARTMENT OF LABOR AND INDUSTRIES, STATE OF WASHINGTON

Joint Board

Dated November 27, 1944.
At Olympia, Washington.

Gange Lumber Co.
320 Perkins Building
Tacoma, Washington

Claimant—Ralph Rowley

ORDER DENYING APPLICATION FOR REHEARING

Claim No.	Firm No.	Class	Date Injured
813023	55397	10-2	7-13-27

On this date, the complete record of the above claim being presented to the Joint Board in Executive Session and the Joint Board having carefully and thoroughly considered such record *together with all evidence offered in the matter, and you being hereby notified,* now:

It is Hereby Ordered That whereas it appears to the Board that this claim has heretofore been appealed to the Supreme Court of the State of Washington and that said Court held upon said appeal, in *Lane v. Department of Labor and Industries,* 121 Wash. Dec. (No. 11) 395, that the claimant herein was entitled to a consideration of his application for reopening on its merits under Laws of Washington, 1941, Chapter 209, Section 1, and that said law was not in violation of the 14th Amendment to the Constitution of the United States as contended by the employer herein, and the Joint Board being advised in the premises, and you being hereby notified, now:

It Is Hereby Ordered That the application of the employer, Gange Lumber Company, for a rehearing of the order of the Supervisor of Industrial Insurance dated November 25, 1944, be and the same is hereby denied.

Joint Board, Robert H. Harlin, Director; John Shaughnessey, Supervisor of Industrial Insurance;

Jno. E. Morgan, Supervisor of Safety; Riley R. Zumwalt Sr. (S)., Secretary.

cc to: Mr. T. J. Hanify, Attorney at Law, Hoge Building, Seattle 4, Washington.
cc to: Mr. Ralph Rowley, c/o E. E. Stark, P. O. Box 985, Olympia, Washington.
Joint Board. Mailed Nov. 27, 1944.
RK (S.)
(RRZ:RK)

[fol. 37] IN SUPERIOR COURT OF PIERCE COUNTY

No. 89046

Appeal to Superior Court

(Claim No. 815025) 813023

GANGE LUMBER COMPANY, a Corporation, Plaintiff,

vs.

RALPH ROWLEY and DEPARTMENT OF LABOR AND INDUSTRIES OF THE STATE OF WASHINGTON, Defendants

NOTICE OF APPEAL—Filed November 30, 1944

To the above named Ralph Rowley and
To the Department of Labor and Industries of the State of Washington, and to the Joint Board thereof, consisting of Robert H. Harlin, Director of the Department of Labor and Industries; John Shaughnessy, Supervisor of Industrial Insurance, and John E. Morgan, Supervisor of Safety:

You and Each of You will please take notice that the plaintiff above named, feeling aggrieved at the entry of the order of the Joint Board, dated November 27, 1944, ordering that the application of the above named Gange Lumber Company for a rehearing of the order herein of the Supervisor of Industrial Insurance, dated November 25, 1944, be denied, hereby appeals to the Superior Court of the State of Washington for Pierce County, the county of residence of the plaintiff and the defendant Ralph Row-

ley, from the whole and each and every part of said order of the Joint Board dated November 27, 1944.

T. J. Hanify, Grosscup, Morrow & Ambler, L. B. Donley, Hulbert, Helsell & Paul, Little, Leader, LeSourd & Palmer, Laube & Laughlin.

Address: 812 Hoge Building, Seattle 4, Wash.

[fol. 38] Service of the foregoing Notice of Appeal and receipt of a copy thereof is hereby acknowledged this 28th day of November, 1944.

Robert H. Harlin, Director of Department of Labor and Industries.

Received Nov. 28, 1944. Dept. of Labor and Industries, Olympia, Washington.

[File endorsement omitted.]

[fols. 39-42] In Superior Court of Pierce County

[Title omitted]

Plaintiff's Motion for Judgment on the Record—Filed December 5, 1944

Comes now the Plaintiff, Gange Lumber Company, a corporation, the Employer affected by the order herein of the Supervisor of Industrial Insurance dated November 25, 1944, and the order of the Joint Board of the Department of Labor and Industries dated November 27, 1944 sustaining said order of the Supervisor of Industrial Insurance, and moves the Court for judgment reversing said order of the Joint Board dated November 27, 1944, and directing that the said order of the Supervisor of Industrial Insurance dated November 25, 1944 be reversed, and that the application herein of the defendant Ralph Rowley for reopening of his industrial claim be denied.

This motion is based upon the records and files herein and in cause No. 89046 of this court, and upon the following facts appearing from said records and files:

* * * * * * *

[fol. 43] 7. That, notwithstanding the aforesaid decision of the Supreme Court of the State of Washington, the 1941

Act, as interpreted by said Supreme Court as aforesaid, and said order of the Supervisor of Industrial Insurance dated November 25, 1944 and the said Joint Board dated November 27, 1944 entered pursuant thereto, insofar as said Act and orders provide for an award to the defendant Rowley although his right to apply for or receive such an award had once become barred, and insofar as said Act and orders required the amount of such award to be charged to plaintiff's cost experience under said Workmen's Compensation Act, constitute a taking of the property of plaintiff without due process of law and deny plaintiff the equal [fol. 44] protection of the laws in violation of the 14th Amendment to the Constitution of the United States and are void.

T. J. Hanify, Grosscup, Morrow & Ambler, L. B. Donley, Hulbert, Helsell & Paul, Little, Leader, LeSourd & Palmer, Laube & Laughlin, Attorneys for Plaintiff.

[File endorsement omitted.]

Address: 812 Hope Building, Seattle, Wash.

Service of the foregoing Motion and receipt of a copy thereof is hereby acknowledged this 3rd day of December, 1944.

Allen & Carey, Attorneys for defendant Ralph Rowley. Smith Troy, Attorney General. Harry L. Parr, Assistant Attorney General, Attorneys for defendant Department of Labor and Industries.

[fol. 45] In Superior Court of Pierce County

[Title omitted]

Defendants' Motions for Judgment of Dismissal—Filed December 5, 1944

Come now the defendants Ralph Rowley and Department of Labor and Industries of the State of Washington, and move the Court for a judgment of dismissal of the

appeal of the plaintiff Gange Lumber Company herein with prejudice on the following grounds and for the following reasons:

1. That this cause was heretofore appealed to this court in its cause No. 89046 by the defendant Ralph Rowley from an order of the Joint Board of the Department of Labor and Industries, dated April 5, 1943, affirming an order of the Supervisor of Industrial Insurance, dated March 24, 1943, dismissing an application of the defendant Ralph Rowley to said Department for a reopening of his industrial insurance claim herein; that judgment was entered by this court on December 10, 1943 upon said appeal of the defendant Ralph Rowley confirming the said order of the Joint Board dated April 5, 1943.

2. That thereafter, the defendant Ralph Rowley appealed from said judgment to the Supreme Court of the State of Washington in its cause No. 29290, which appeal was consolidated for hearing and decision with three other causes in said Supreme Court, and was thereafter decided by said Court in *Lane v. Department of Labor and Industries*; [fol. 46] 121 Wash. Dec. (No. 11) 395, wherein judgment was entered on October 9, 1944 reversing said judgment of this court dated December 10, 1943 and remanding this cause to this court with directions that the industrial insurance claim of the defendant Ralph Rowley herein be considered by the defendant Department of Labor and Industries upon its merits; that pursuant to said judgment of the Supreme Court of the State of Washington, a judgment was entered by this court in said cause No. 89046 on October 19, 1944 remanding this cause to the defendant Department of Labor and Industries for proceedings consistent with said decision of the Supreme Court of Washington; that pursuant to said judgment of this Court the Joint Board of the defendant Department of Labor and Industries entered its order directing the Supervisor of Industrial Insurance to consider the defendant Ralph Rowley's claim upon its merits, and that pursuant thereto the said Supervisor considered said claim and, after an investigation, entered an order, dated November 25, 1944, awarding the defendant Ralph Rowley certain compensation on account of an aggravation of his physical disability.

3. That the plaintiff Gange Lumber Company thereafter filed its application to the Joint Board of the defendant

Department of Labor and Industries for a rehearing of said order of the Supervisor of Industrial Insurance dated November 25, 1944; that said application was denied by said Joint Board by order dated November 27, 1944, from which order the plaintiff Gange Lumber Company has taken the present appeal herein to this court.

4. That no issue of fact is raised in this cause and that the only issue of law raised by the plaintiff Gange Lumber Company in its said application for rehearing to said Joint Board and now before this Court is the issue of whether the Laws of Washington, 1941, Chapter 209, Section 1, as it applies to the plaintiff herein is in violation of the [fol. 47] 14th Amendment to the Constitution of the United States; that said issue was raised between the parties hereto upon the aforesaid appeal of the defendant Ralph Rowley to the Supreme Court of the State of Washington in *Lane v. Department of Labor and Industries, supra,* and was decided by said Supreme Court upon said appeal adversely to the contention therein and herein of the plaintiff Gange Lumber Company, and that said decision of the Supreme Court of Washington is a determination of said issue which is now conclusive upon this court in favor of the defendants herein and against the plaintiff Gange Lumber Company.

These motions are based upon the records and files herein and in said Cause No. 89046.

Allen & Carey, Attorneys for Defendant Ralph Rowley. Smith Troy, Attorney General; Harry L. Parr, Assistant Attorney General, Attorneys for Defendant Department of Labor and Industries.

Service of the foregoing Motions and receipt of a copy thereof is hereby acknowledged this 3rd day of December, 1944.

T. J. Hanify, Of Attorneys for Plaintiff, Gange Lumber Company.

[fol. 48] IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR PIERCE COUNTY

No. 89046

GANGE LUMBER COMPANY, a Corporation, Plaintiff,

v.

RALPH ROWLEY and DEPARTMENT OF LABOR AND INDUSTRIES OF THE STATE OF WASHINGTON, Defendants

ORDER GRANTING DEFENDANTS' MOTIONS FOR DISMISSAL AND JUDGMENT OF DISMISSAL—Filed December 5, 1944

This cause coming on regularly for hearing in open court this 5th day of December, 1944, upon the motion of the plaintiff Gange Lumber Company for judgment on the record and upon the motions of the defendants Ralph Rowley and Department of Labor and Industries of the State of Washington for judgment of dismissal, plaintiff appearing by Mr. T. J. Hanify, one of its attorneys, the defendant Ralph Rowley by Mr. Charles R. Carey, one of his attorneys, and the defendant Department of Labor and Industries of the State of Washington by Mr. Harry L. Parr, Assistant Attorney General, one of its attorneys, and it appearing to the Court that no issue of fact has been or is raised herein and that the only issue of law herein is whether Laws of Washington, 1941, Chapter 208, Section 1, insofar as it permits the reopening of the industrial insurance claim of the defendant Ralph Rowley and the award made to said defendant upon such reopening by the order herein of the Supervisor of Industrial Insurance dated November 25, 1944, and the charging of the amount of said award to the cost experience of the plaintiff Gange Lumber Company under the Workmen's Compensation Act of the State of Washington, constitutes a taking of the property of the plaintiff Gange Lumber Company without due process of law and denies said plaintiff the equal protection [fol. 49] of the laws in violation of the 14th Amendment to the Constitution of the United States; and

It appearing further to the Court that this cause has heretofore been before the Court in its Cause No. 89046 wherein judgment was entered on December 10, 1943, from which judgment the defendant Ralph Rowley appealed to the Supreme Court of Washington; that said appeal was con-

solidated with three other causes upon appeal before said Court and was decided in *Lane v. Department of Labor and Industries*, 121 Wash. Dec. (No. 11) 395; that the aforesaid issue of law was raised between the parties hereto in said appeal and was decided therein by said Supreme Court adversely to the present contention of the plaintiff herein; and

The Court being of the opinion that said decision of the Supreme Court of Washington is a determination of the aforesaid issue of law which is conclusive upon this Court in favor of the defendants and against the plaintiff, and the Court being advised in the premises,

It Is Therefore, Ordered, Adjudged and Decreed, That the aforesaid motion of the plaintiff for judgment upon the record be, and the same is hereby denied and that the motions of the defendants Ralph Rowley and Department of Labor and Industries of the State of Washington be, and each thereof is hereby granted, to all of which the plaintiff excepts and its exception is allowed; and

It Is Further Ordered, Adjudged and Decreed that this cause and the plaintiff's appeal herein be, and the same are hereby dismissed with prejudice; that the aforesaid order of the Joint Board dated November 27, 1944 be, and the same is hereby confirmed.

[fol. 50] Done in Open Court this 5th day of December, 1944.

E. F. Freeman, Judge.

Presented by: Charles R. Carey, of Attorneys for defendant Ralph Rowley; Harry L. Parr, Assistant Attorney General, of Attorneys for defendant Department of Labor and Industries.

Approved as to form: T. J. Hanify, of Attorneys for Plaintiff.

[fol. 51] [File endorsement omitted]

IN SUPERIOR COURT OF PIERCE COUNTY

[Title omitted]

NOTICE OF APPEAL TO SUPREME COURT—Filed December 5, 1944

To the defendant Ralph Rowley and to Allen & Carey, his attorneys; and

To the defendant Department of Labor and Industries of the State of Washington and to Smith Troy, Attorney General and Harry L. Parr, Assistant Attorney General, its attorneys:

You and each of you will please take notice that Gange Lumber Company, a corporation, the above named plaintiff, feeling itself aggrieved by the judgment in the above entitled case dated December 5, 1944, does hereby appeal to the Supreme Court of the State of Washington from said judgment and from the whole and each and every part thereof.

T. J. Hanify; Grosscup, Morrow & Ambler; L. B. Donley; Hulbert, Helsell & Paul; Little, Leader, LeSourd & Palmer; Laube & Laughlin, Attorneys for Plaintiff.

Service of the foregoing Notice of Appeal and receipt of a copy thereof on December 5, 1944, is hereby acknowledged.

Allen & Carey, Attorneys for Defendant Ralph Rowley.

Service of the foregoing Notice of Appeal and receipt of a copy thereof on December 5, 1944, is hereby acknowledged.

Smith Troy, Attorney General; Harry L. Parr, Assistant Attorney General, Attorneys for Deft. Dept. of Labor & Industries.

[fol. 52] [File endorsement omitted]

No. 29541

IN SUPREME COURT OF WASHINGTON

GANGE LUMBER COMPANY, a Corporation, Plaintiff and Appellant,

vs.

RALPH ROWLEY and DEPARTMENT OF LABOR AND INDUSTRIES OF THE STATE OF WASHINGTON, Defendants and Respondents

Appeal from the Superior Court for Pierce County

Honorable E. F. Freeman, Judge Presiding

APPELLANT'S BRIEF—Filed December 30, 1944

ASSIGNMENTS OF ERROR

1. The Superior Court, in following the decision in *Lane et al. v. Department of Labor and Industries*, 121 Wash. Dec. (No. 11) 395 erred in holding that Laws of Washington, 1941, Chapter 209, Section 1, applies retroactively to permit reopening of Respondent Rowley's claim notwithstanding that his right to apply for such reopening had become barred and expired under Rem. Rev. Stat., Section 7679 (h).

2. The Superior Court, in following said decision in the *Lane* cases, erred in holding that said Laws of Washington, 1941, Chapter 209, Section 1, insofar as said statute purports to revive the respondent Rowley's statutory right to apply for reopening of his industrial insurance claim, does not deprive appellant of its property without due process of law or deny appellant the equal protection of the laws, in violation of the Fourteenth Amendment to the Constitution of the United States and Article I, Section 3, of the Constitution of the State of Washington, and said court erred in failing to hold that said statute does so deprive appellant of its property and does deny it the equal pro-
[fol. 53] tection of the laws.

3. The Superior Court, in following said decision in the *Lane* cases, erred in holding that the removal by said Laws

of Washington, Chapter 209, Section 1, of the bar of limitations to the reopening of the respondent Rowley's claim affected only said respondent's remedies under the Workmen's Compensation Act of the State of Washington and did not affect the substantial rights of the appellant, and said court erred in failing to hold that said removal did affect the appellant's substantial rights.

4. The Superior Court, in following said decision in the *Lane* cases, erred in holding that the Fourteenth Amendment to the Constitution of the United States and Article I, Section 3 of the Constitution of the State of Washington does not apply to a law, *viz.*, Laws of Washington 1941, Chapter 209, Section 1, enacted in the exercise of the police power of a State.

5. The Superior Court, in following said decision in the *Lane* cases, erred in holding that the contributions of premiums exacted of an employer by the Workmen's Compensation Act of the State of Washington and paid by the employer into the accident fund maintained by the respondent Department of Labor and Industries under said Act are a license or excise tax.

6. The Superior Court erred in confirming the decision of the Joint Board of the respondent Department of Labor and Industries, affirming the action of the Supervisor of Industrial Insurance in reopening respondent Rowley's claim and allowing him additional compensation.

7. The Superior Court erred in denying appellant's motion for judgment on the record.

8. The Superior Court erred in granting respondents' motions for judgment of dismissal.

9. The Superior Court erred in entering judgment dismissing appellant's appeal to said court with prejudice.

• • • • • • • •

[fol. 54] IN SUPREME COURT OF WASHINGTON

No. 29541

[Title omitted]

APPELLANT'S PETITION FOR REHEARING—Filed February 8, 1945

* * * * * * *

II. *Constitutionality of the Act*

If the court's interpretation of the 1941 Act is to stand, then we urge once more that the Act, as it applies to the employer in this case, deprives the employer of its property without due process of law and denies it the equal protection of the laws in violation of the 14th Amendment to the Constitution of the United States and Article I, Section 3, of the Constitution of the State of Washington. This conclusion is not only sound but, we submit, is compelled by the decision of the Supreme Court of the United States in *William Danzer & Co.* v. *S. I. R. Co.*, 268 U. S. 633, 45 S. Ct. 612, 69 L. ed. 1126.

* * * * * * *

[File endorsement omitted.]

[fol. 55] IN SUPREME COURT OF WASHINGTON

No. 29541

[Title omitted]

ORDER DENYING PETITION FOR REHEARING—Filed February 16, 1945

The court having considered the appellant's petition for a rehearing herein,

It Is Ordered that the petition for rehearing be and it is hereby denied.

Dated this 16th day of February, 1945.

By the Court:

Walter B. Beals, Chief Justice.

[File endorsement omitted.]

[fol. 56] IN SUPREME COURT OF WASHINGTON

No. 29541

Pierce County No. 89046

GANGE LUMBER COMPANY, a corporation, Appellant,

vs.

RALPH ROWLEY and DEPARTMENT OF LABOR and INDUSTRIES OF THE STATE OF WASHINGTON, Respondents

JUDGMENT—February 19, 1945

This cause having been heretofore submitted to the court, upon the transcript of the record of the Superior Court of Pierce County, and upon the argument of counsel, and the Court having fully considered the same and being fully advised in the premises, it is now, on this 19 day of February, A. D. 1945, on motion of Allen & Carey, and Smith Troy, Attorney General, of counsel for respective respondents, considered, adjudged and decreed, that the judgment of the said Superior Court be, and the same is hereby affirmed with cost; and that the said Ralph Rowley have and recover of and from the said Gange Lumber Company the costs of this action taxed and allowed at Fifty-four and 05/100 ($54.05) dollars, and that execution issue therefor;

And that the said Department of Labor and Industries of the State of Washington have and recover of and from the said Gange Lumber Company the costs of this action taxed and allowed at Forty-two and no/100 ($42.00) Dollars, and that execution issue therefor. And it is further ordered, that this cause be remitted to the said Superior Court for further proceedings, in accordance herewith.

[fols. 57-82] [File endorsement omitted]

IN SUPREME COURT OF WASHINGTON

No. 29288

I. C. LANE, Appellant,

v.

DEPARTMENT OF LABOR and INDUSTRIES OF THE STATE OF WASHINGTON and DEFIANCE LUMBER COMPANY, a corporation, Employer, Respondents.

No. 29289

I. C. LANE, Appellant,

v.

DEPARTMENT OF LABOR and INDUSTRIES OF THE STATE OF WASHINGTON and GANGE LUMBER COMPANY, a corporation, Employer, Respondents.

No. 29290

RALPH ROWLEY, Appellant,

v.

DEPARTMENT OF LABOR and INDUSTRIES OF THE STATE OF WASHINGTON and GANGE LUMBER COMPANY, a corporation, Employer, Respondents.

No. 29291

En Banc

(Consolidated)

JOHN MOORE, Respondent

v.

DEPARTMENT OF LABOR and INDUSTRIES OF THE STATE OF WASHINGTON, Defendant, and Northwest Door Company, Employer, Appellant.

OPINION—Filed August 30th, 1944

[fol. 83] This appeal involves the claims of injured workmen for compensation for aggravation of injuries and for

which they had previously received awards. In the two cases of I. C. Lane and in that of Ralph Rowley, the court affirmed the orders of the department of Labor and Industries disallowing the claims on the ground that they had not been made within the time limited by law. In the case of John Moore, the court reversed the order of the department disallowing his claim upon the same ground. On appeal to this court the cases were consolidated. The parties to the appeal will be referred to as the claimants, the employers, and the department.

The questions to be determined are whether the act of 1941 applies to barred claims, and, if so, is it constitutional.

The original act of 1911, chapter 74, p. 345, by § 5(h), p. 360, provided as follows:

"If aggravation, diminution, or termination of disability takes place or be discovered after the rate of compensation shall have been established or compensation terminated in any case the department may, upon the application of the beneficiary or upon its own motion, readjust for future application the rate of compensation in accordance with the rules in this section provided for the same, or in a proper case terminate the payments."

No limitation of time was fixed within which the workman was required to make application to the department of labor and industries. The law remained in this condition until the enactment of chapter 310, Laws of 1927, p. 813, when § 4(h), p. 844, was amended so as to place a limitation of three years upon the making of a claim for compensation for aggravation of injuries. This amended section was carried forward into chapter 132, Laws of 1929, p. 338, § 2. It was again amended by chapter 209, Laws of 1941 (referendum measure 22), p. 633, § 1 (Rem. Supp. 1941, § 7679), and now reads as follows:

[fol. 84] "If aggravation, diminution, or termination of disability takes place or be discovered after the rate of compensation shall have been established or compensation terminated, in any case the Director of Labor and Industries, through and by means of the Division of Industrial Insurance, may, upon the application of the beneficiary, made within five years after the establishment or termination of such compensation, or upon his own motion, readjust for further application the rate of compensation in accord-

ance with the rules in this section provided for the same, or in a proper case terminate the payment: *Provided*, Any such applicant whose compensation has heretofore been established or terminated shall have five (5) years from the taking effect of this act within which to apply for such readjustment."

At the time this act became effective all of the claims now under consideration were barred by the three-year limitation period.

It is a general rule that a statute fixing a time limitation upon the assertion of a right or the enforcement of an obligation will not be held *by construction* to operate retroactively, and it will be deemed so to operate only when, by its plain terms or by necessary implication, such intention is apparent. It is not necessary, however, that the statute expressly state in words that it shall so operate, or that rights or obligations already barred shall be revived, but it is sufficient if the plain words of the statute carry such meaning and leave no room for doubt.

We have in many cases applied the rule that, where the language of a statute is plain and clear and capable of but one meaning, there is no room for construction and none is needed. *State ex rel. George* v. *Seattle*, 184 Wash. 560, 52 P. (2d) 360; *Carkonen* v. *Alberts*, 196 Wash. 575, 83 P. (2d) 899; *Shelton Hotel Co., Inc.*, v. *Bates*, 4 Wn. (2d) 498, 104 P. (2d) 478; *Smith* v. *Department of Labor & Industries*, 8 Wn. (2d) 587, 113 P. (2d) 57. A very clear and comprehensive statement of the rule is found in 50 Am. Jr. (Statutes) 204, § 225, as follows:

"A statute is not open to construction as a matter of course. It is open to construction only where the language used in the statute requires interpretation, that is, where the statute is ambiguous, or will bear two or more construc- [fol. 85] tions, or is of "such doubtful or obscure meaning that reasonable minds might be uncertain or disagree as to its meaning. Where the language of a statute is plain and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation, and the court has no right to look for or impose another meaning. In the case of such unambiguity, it is the established policy of the courts to regard the statute as meaning what it says, and to avoid giving it any other construction than that which its words demand. The

plain and obvious meaning of the language used is not only the safest guide to follow in construing it, but it has been presumed conclusively that the clear and explicit terms of a statute expresses the legislative intention, so that such plain and obvious provisions must control. A plain and unambiguous statute is to be applied, and not interpreted, since such a statute speaks for itself, and any attempt to make it clearer is a vain labor and tends only to obscurity."

The legislature has used the language quoted above three different times: in 1927, 1929 and 1941. Each time it spoke on the subject matter involved in the workmen's compensation act it was carrying out a social objective, namely, to give further relief to injured workmen than had been given by previous legislation in view of recognized changed economic conditions. In doing so there could be no reason for any discrimination between injured workmen. The one whose compensation has once been established or terminated but who has not made claim for aggravation of his injuries within the three-year period prescribed, is just as much in need of aid as is one who has done so, or as one who might later make such a claim; and as the legislature did not affirmatively exclude such injured workman, it is very clear that the plain language of this statute is all inclusive. If the statute stopped at the proviso, then all that this court has said about applying statutes of limitation prospectively and that the law in force at the time the claim of an injured workman accrued must govern, would be applicable. It would seem as though the lawmakers sensed this and, to avoid such effect, added the proviso: "*Any* such applicant whose compensation has *heretofore* been established or terminated shall have five (5) years *from the taking effect of this act* within which to apply for such readjustments." (Italics ours.)

[fol. 86] We, therefore, hold that the act applies to the claims of the claimants, and that they were timely made.

On the constitutional question raised by the employers, we must take into consideration the type of statute that is now before us and bear in mind that it is a part of the legislation enacted pursuant to the police power of the state.

The employers assert that after a claim of the kind before us is once barred, it cannot be revived by subsequent legislation because a right of immunity in favor of

the employer arises which constitutes a vested right and its impairment is protected by constitutional inhibitions. The claimants and the attorney general contend that the act relates only to the remedy of the workman and does not affect any vested right of the employer. Many authorities are cited by the respective counsel. There is a conflict of authority on the general subject, but much of it disappears when the nature and scope of the different statutes are considered.

There are two types of statutes which the courts had to apply. One of them is the statute which either by its plain terms or by the construction given it by the court makes the limitation of time inhere in the right or obligation rather than the remedy. It is sometimes referred to as a statute of non-claim, and, strictly speaking, is not a statute of limitations at all. In its usual form the statute creates some right or obligation and a time is fixed within which the right must be asserted or the obligation sought to be enforced, or the same will be barred. When the limitation period expires the right or obligation is extinguished and cannot be revived by a subsequent statute enlarging the time limitation. Illustrations of non-claim statutes in this state are those providing for liens of laborers and materialmen, claims against estates of [fol. 87] deceased persons, and claims for damages against municipal corporations.

The courts seem to be in substantial accord that a statute of limitations cannot enlarge the time for the commencement of an action when the time limitation therefor is fixed by contract; also in cases where one has been in possession of property for the period required to bar an action by the real owner for its recovery, the theory being that, by the lapse of the statutory time, title to the property has passed and it cannot be divested by a statutory revival of the right of action to recover its possession. This court has held that the right to enforce a lien for street improvements cannot be enlarged by statute after the time limit therefor has expired. *Seattle* v. *DeWolfe*, 17 Wash. 349, 49 Pac. 553. In *Earle* v. *Froedtert Grain & Malting Co.*, 197 Wash. 341, 85 P. (2d) 264, and *Peoples* v. *Hayes*, 4 Wn. (2d) 253, 104 P. (2d) 305, it was decided, with reference to a statute relating to actions to recover on the ground of unlawful preferences, that it is not in its strict sense one of limitation at all,

but one that goes to the right to recover, and not merely to the remedy. This is the theory of the leading case of *William Danzer & Co.* v. *Gulf & S. I. R. Co.*, 268 U. S. 633, 45 S. Ct. 612, 69 L. Ed. 1126, relied on by counsel for the employers.

The other type of statute is one which relates only to the remedy and has nothing to do with any right or obligation, does not inhere in either, and is wholly independent of them. It is a statute of limitations in its strict sense, and, although a remedy may become barred thereunder, the right or obligation is not extinguished. It is a statute of repose.

There is no constitutional inhibition against the revival of a barred remedy. The leading case on the subject is *Campbell* v. *Holt*, 115 U. S. 620, 6 S. Ct. 209, 29 L. Ed. 483. [fol. 88] We have adopted and followed the rule of that case in *Herr* v. *Schwager*, 145 Wash. 101, 258 Pac. 1039. The distinctions between the different types of statutes as bearing upon the question of whether a claim against which a limitation has run can be revived by a subsequent limitation statute, will be found in the annotations and the cases to which they are appended in 36 A. L. R. 1316, 46 A. L. R. 1101, 67 A. L. R. 297, 78 A. L. R. 1294, 133 A. L. R. 384.

There are cases contrary to *Campbell* v. *Holt* and *Herr* v. *Schwager* which hold that, if the remedy is barred, the immunity from suit is a right that cannot be impaired by a statute of revival, but we definitely declined in the *Herr* case to follow them, and we have not departed from the doctrine of that case.

A claim of a workman of the kind before us is a personal one for a further allowance out of the accident fund, and when the nature of the fund is analyzed and the relationship to it of an employer and an injured workman is considered, it readily appears that the act before us is not in any sense a statute of nonclaim, but is of a character such as to have applicable to it the doctrine of the case of *Herr* v. *Schwager*.

When the original act of 1911 came before the court it was decided that the money an employer paid into the accident fund was a license tax on his privilege to carry on his business. *State ex rel. Davis-Smith Co.* v. *Clausen*, 65 Wash. 156, 117 Pac. 1101. This view was approved in

Mountain Timber Co. v. *State of Washington*, 243 U. S. 219, 237, 61 L. Ed. 685, 37 S. Ct. 260, Ann. Cas. 1917D, 642, in which it is said:

"In the present case the Supreme Court of Washington (75 Washington, 581, 583), sustained the law as legitimate exercise of the police power, referring at the same time to its previous decision in the *Clausen Case*, 65 Washington, 156, 203, 207, which was rested principally upon that power, but also (pp. 203, 207), sustained the charges imposed upon employers engaged in the specified industries as possessing the character of a license tax upon the occupation, partaking of the dual nature of a tax for revenue and a tax for purposes of regulation."

[fol. 89] We followed this viewpoint in *State* v. *Vinther*, 176 Wash. 391, 29 P. (2d) 693; and the same thought is the basis of *State ex rel. Crabb* v. *Olinger*, 196 Wash. 308, 82 P. (2d) 865.

The workmen's compensation act and its amendments is an exercise of the police power of the state and in their enactment the legislature did not encounter many of the constitutional limitations it might have otherwise. *Raymond Lumber Co.* v. *Raymond Light & Water Co.*, 92 Wash. 330, 159 Pac. 133; *Shea* v. *Olson*, 185 Wash. 143, 53 P. (2d) 615. In the latter case we said, p. 153:

"We next consider the provisions of Art. I, §§ 3 and 12 of the state constitution and the fourteenth amendment of the United States constitution, relating to due process and the equal protection of the laws.

"None of these constitutional provisions apply to laws enacted by a state legislature in the exercise of its police powers. We have repeatedly so held. (Citing authorities.)"

The fact that an employer has a right to appear and contest a claim of an injured workman and to take an appeal from an adverse decision does not give him any right in or to the accident fund, and we have never held that he has any so-called vested right therein. The reason he may contest a claim is that his cost experience would be affected by an unlawful use of the fund. When it is finally decided that a claimant is entitled to compensation, all further interest on the part of the employer ceases, and

all procedural and administrative questions are of no concern of his, but lie only between the claimant and the department.

The act took away from the workman his common-law right of action for negligence. In its place it provided for industrial insurance. The employer is taxed to create and maintain an accident fund. The state administers the fund through one of its agencies. The act creating the right of the workman to compensation fixed a time limit within which he must make his claim after the day upon [fol. 90] which the injury occurred, or the right thereto accrued, and provided that if he did not do so such claim would not be enforcible; but it did not fix any time limit within which an injured workman whose rate of compensation had been established or his compensation had been terminated might apply for an adjustment in the event of aggravation of his injury thereafter. Provision was made that the department might, "upon its own motion readjust for further application the rate of compensation . . ." The law remained this way until 1927, when it was provided that a workman claiming aggravation must make claim therefor within a three-year period.

The employer has never had anything to say about when a claim for aggravation of injury may be made, and the fact that after sixteen years of operation of the law the legislature decided to require the injured workman claiming aggravation to make his claim within a limited time, did not change the status of the employer with reference to the accident fund. It did not thereby create a statute of nonclaim. It merely affected the remedy of the injured workman. It was enacted for the benefit of the department so that it would not have to consider stale claims, when perhaps the securing of evidence as to their merit might be difficult or impossible. The claim of the workman is not one against the employer and the limitation period was not made for the employer's benefit.

The limitation periods fixed by the acts of 1927, 1929 and 1941 have no relation to the right to a readjustment of compensation created by the act of 1911, and do not inhere therein, but relate only to the remedy of the claimant. The lapse of time limitation does not build up any immunity in favor of the employer or bring into being any vested right that can be affected if the time limitation is changed. We held in *Matson* v. *Department of Labor &*

[fol. 91] *Industries*, 176 Wash. 345, 29 P. (2d) 675, that no vested right of an injured workman was affected when a limitation period was provided where none had existed before, and the same authority exists to enlarge the time for making claims for readjustment, and, for the same reasons given in that case, no vested right of an employer would be affected.

The act of 1941 before us is so plain and all inclusive in its wording as not to need construction. It applies to all applicants for readjustment whose compensation has been established or terminated, and in passing it the legislative authority has encountered no constitutional inhibitions.

The judgments in the Lane and the Rowley cases are reversed, and the judgment in the Moore case is affirmed.

Grady, J.

We concur: Beals, J.; Steinert, J.; Blake, J.; Robinson, J.; Jeffers, J.; Mallery, J.

I dissent: Simpson, C. J.

[fol. 92] DISSENTING OPINION

MILLARD, J. (dissenting):

While engaged in extrahazardous work in the employ of Defiance Lumber Company, I. C. Lane sustained an injury in January 1927, for which he was allowed compensation by the department of labor and industries and his claim was closed by a departmental order February 28, 1927, from which he did not appeal. Lane applied, January 26, 1943, to the department for a reopening of his claim on the ground that his disability had become aggravated since his claim was closed. The application was denied for the reason that the right to a reopening of the claim was barred under the three-year limitation included in the industrial insurance statute since 1927. Lane then applied for a rehearing before the joint board of the department on the ground that referendum measure No. 22 adopted at the general election November 3, 1942, permitted reopening of a claim upon an application made at any time within five years after the effective date of the measure, despite the fact that the claim was barred before that date. From the order entered by the joint board denying the petition the claimant appealed to the superior court for

Pierce county, which affirmed the decision of the department. Plaintiff appealed.

In the second cause Lane was injured in 1935 while engaged in extrahazardous work in the employ of Gange Lumber Company. His claim was closed by the department in January 1936. In 1943 Lane's application for reopening of his claim was denied and on his appeal to the superior court from the order of the joint board denying his petition for rehearing he was unsuccessful. From that judgment plaintiff has appealed.

In the third case Ralph Rowley sustained an injury while engaged in extrahazardous work in the employ of Gange Lumber Company. His claim was closed in 1938 and no steps were taken by him for reopening of the claim until 1943. The procedure in his case is the same as in the Lane cases and he appealed from the judgment of the superior court affirming the order of the department denying his application.

[fol. 93] In the fourth case John Moore was injured in 1937 while engaged in extrahazardous work in the employ of Northwest Door Company. His claim was closed March 7, 1939. His application filed in 1943 for reopening of the claim was rejected. An order was entered by the joint board denying his petition for rehearing. His appeal to the superior court from that order resulted in entry of a judgment reversing the order of the department and remanding the cause for reconsideration of application for reopening the claim on its merits. From that judgment the employer appealed.

The original workmen's compensation act (Laws of 1911, Chapter 74, § 5 (h), p. 360) provided

"If aggravation, diminution, or termination of disability takes place or be discovered after the rate of compensation shall have been established or compensation terminated in any case the department may, upon the application of the beneficiary or upon its own motion, readjust for future application the rate of compensation in accordance with the rules in this section provided for the same, or in a proper case terminate the payments."

It will be noted that the statute did not impose any limitation of time upon the right of a claimant to apply for a reopening of his claim on the ground of aggravation of his disability.

The foregoing was not changed until 1927. By laws of 1927, chapter 310, § 4, (h), p. 844 the statute was amended to limit to three years the time within which a claimant might apply for a reopening of his claim on the ground of aggravation of disability. The amended statute reads as follows:

"If aggravation, diminution, or termination of disability takes place or be discovered after the rate of compensation shall have been established or compensation terminated, in any case the director of labor and industries, through and by means of the division of industrial insurance, may, upon the application of the beneficiary, made within three years after the establishment or termination of such compensation, or upon his own motion, readjust for further application the rate of compensation in accordance with the rules in this section provided for the same, or in a proper case terminate the payment: *Provided,* Any such applicant whose compensation has heretofore been established or terminated shall have three years from the taking effect of this act within which to apply for such readjustment."

The foregoing was reenacted without any change by Laws of 1929, chapter 132, § 2(h), p. 338 and remained the same (Rem. Rev. Stat., § 7679 (h)) until Laws of 1941, chapter [fol. 94] 209, p. 624 subsequently approved by the people as referendum measure No. 22 became effective December 3, 1942. The only changes made by referendum No. 22 in the aggravation provision of the 1927 statute, as reenacted in 1929, were to substitute the words "five years" for the words "three years" in the body of subsection (h) and to substitute the words "five (5) years" for the words "three years" in the proviso. The subdivision reads as follows:

"If aggravation, diminution, or termination of disability takes place or be discovered after the rate of compensation shall have been established or compensation terminated, in any case the Director of Labor and Industries, through and by means of the Division of Industrial Insurance, may, upon the application of the beneficiary, made within five years after the establishment or termination of such compensation, or upon his own motion, readjust for further application the rate of compensation in accordance with the rules in this section provided for the same, or in a proper case terminate the payment: *Provided,* Any such applicant

whose compensation has heretofore been established or terminated shall have five (5) years from the taking effect of this act within which to apply for such readjustment."

In the Lane and Rowley cases the superior court held that referendum No. 22 was not intended to apply retroactively and therefore granted the employers' motions to dismiss the appeals of the claimants. In the Moore case the court denied the employer's motion and entered judgment reversing the order of the department.

The employers contend

"(1) that those who enacted Referendum No. 22 did not intend it should apply retroactively so as to allow reopening of claims barred by limitation of time when the Measure became effective, and that it therefore does not so apply; but (2) if it would so apply, then it is unconstitutional."

The employers concede that referendum No. 22 was intended to apply retroactively so as to extend the time for reopening all claims not barred on the effective date of the referendum measure.

It is the position of claimants that the meaning of the proviso that "Any such applicant whose compensation has [fol. 95] heretofore been established or terminated shall have five (5) years from the taking effect of this act within which to apply for such readjustment" is clear, hence there is nothing to construe; that is, the legislature plainly intended that the five-year statute should apply retroactively so as to permit reopening of claims barred by three-year statute of limitations when amendatory five-year statute became effective.

It is argued that such retroactive application will not render the statute unconstitutional as the method of reopening claims is a matter of practice, procedure, and remedy and does not affect any contractual or vested right of employer, employees or the department of labor and industries. It is further insisted that the act is an exercise of the police power of the state and that the power of the state to impose such a license tax upon the industries in furtherance of the state's public policy in caring for workmen injured in industries may not be successfully challenged.

All statutes must be interpreted before they can be applied, hence all statutes are subject to construction, and if there be more than one possible construction, that mean-

ing will be adopted which most reasonably seems to be the one intended by the legislature. See Crawford, Statutory Construction, p. 283, § 175.

It must be presumed that the members of the legislature are familiar with the doctrine announced by this court in Packscher v. Fuller, 6 Wash. 534, 33 Pac. 875, and consistently followed by us for more than a half century, that where a statute of limitations is amended by simply changing the period of limitation the amendment extends the time for asserting existing claims but does not revive barred claims.

We are committed to the rule that if before the bar of [fol. 96] a statute of limitations has become complete the statutory period of limitation is changed, the old law is not modified by a new so as to give to both statutes a proportional effect; but the time passed is effaced and the new law governs. In other words, the period provided by the new law runs upon all existing claims in order to constitute a bar. The statute in force at the time the action is brought controls, unless the time limited by the old statute for commencing an action has elapsed while the old statute was in force and before the suit is brought, in which case the suit is barred and no subsequent statute can renew the right or take away the bar. Wood on Limitations, 4th edition, Vol. 1, p. 59, §12; Packscher v. Fuller, 6 Wash. 534, 33 Pac. 875; Moore v. Brownfield, 7 Wash. 23, 34 Pac. 199; Seattle v. DeWolfe, 17 Wash. 349, 45 Pac. 553; Earle v. Froedtert Grain & Malting Co., 197 Wash. 341, 85 P. (2d) 264, and Peeples v. Hayes, 4 Wn. (2d) 253, 104 P.(2d) 305.

"A repeal of the statute of limitations by the legislature, and the enactment of a new statute, have the effect of renewing actions that have not expired before the new statute takes effect; but a statute of limitations which repeals or amends a former statute on the same subject does not revive an action which has been barred by the former statute. It is not retroactive, so as to remove the bar of limitations from a claim already barred at the time the act took effect." Wood on Limitations, 4th edition, Vol. 1, p. 74, §12b.

The question presented for our determination is whether the facts of the cases at bar fall within the five-year statute. True, in applying the statute, our decision depends upon the intent of the legislature—whether it intended to in-

clude or exclude claims barred by the three-year statute of limitations when the five year statute of limitations became effective.

The problem of distinguishing between ascertaining the legislative intent and applying the statute should not unduly confuse us. The first consists in discovering what the legislature meant. The second is the determination of [fol. 97] whether the facts of a given case are within or without the legislative meaning previously ascertained.

The meaning of the old Bolognian statute which provided that whoever drew blood in the streets should be severely punished was certainly clear upon its face. Could it apply to the case of a barber who opened a vein of a patient in the street?

"In 1 Blackstone's Commentaries, 91, the learned author, speaking of the construction of statutes, says: 'If there arise out of them any absurd consequences manifestly contradictory to common reason, they are, with regard to those collateral consequences, void * * * When some collateral matter arises out of the general words, and happens to be unreasonable, then the judges are, in decency, to conclude that this consequence was not foreseen by the Parliament, and therefore they are at liberty to expound the statute by equity, and only *quoad hoc* disregard it,' and he gives as an illustration, if an Act of Parliament gives a man power to try all causes that arise within his Manor Dale, yet, if a cause should arise in which he himself is party, the Act is construed not to extend to that because it is unreasonable that any man should determine his own quarrel.

"There was a statute in Bologna that whoever drew blood in the streets should be severely punished, and yet it was held not to apply to the case of a barber who opened a vein in the street. It is commanded in the Decalogue that no work shall be done upon the Sabbath, and yet giving the command a rational interpretation founded upon its design the Infallible Judge held that it did not prohibit works of necessity, charity or benevolence on that day." Riggs v. Palmer, —— N. Y. ——, 5 L. R. A. 340.

The construction for which claimants contend is contrary to reason and could not be attributed to lawmakers in their right senses. That it must be presumed that the legislature

when it enacted the five-year limitation statute was aware of the rule that a legislative attempt to revive a statutory right once expired is unconstitutional needs no citation of sustaining authority. The imputation implicit in claimants' position is that our lawmakers were ignorant of the rule. What could be more unreasonable than to suppose that it was the legislative intention to knowingly pass an invalid act? No such purpose may be ascribed to the lawmakers.

The argument that plainly the legislature intended—and that it did not thereby exceed its powers—that the provi- [fol. 98] sions of the statute should apply retroactively so as to allow reopening of claims barred by limitation of time when referendum No. 22 (Laws of 1941, chapter 209) changed the limitation period in which to apply for a reopening of claims from three to five years is not sound. It is insisted that as the act is remedial only, and since it is a valid exercise of the police power it is not violative of the constitutional provisions relating to due process and the equal protection of the laws.

We are aware of the doctrine that as a general rule legislation which relates alone to procedure or to legal remedies will not be subject to the rule that statutes should not be given a retroactive operation. It should be borne in mind, however, that if a statute which relates to procedure or to legal remedy interferes with vested rights it will be subject to the general rule against retroactive operation. A cause of action once barred by a statute of limitations can not be revived or the right of defense to an action when once acquired can not be affected by a subsequent amendment or repeal of a statute, and the right to set up the bar of such a statute is a vested right which can not be taken away by legislation as it would be deprivation of property without due process of law. Crawford, Statutory Construction, § 285.

We can not too strongly stress that all rights of injured workmen under the workmen's compensation act, which is in derogation of the common law, are statutory. Rem. Rev. Stat., § 7673. If a statutory right has once expired the legislature can not revive that right. Danzer & Co. v. Gulf & Ship Island Railroad Co., 268 U. S. 633.

We find no respectable authority for the position that a time limitation prescribed in the statute upon the right created by the same statute is merely a matter of remedy

and not of substance. The three-year statute created a [fol. 99] right and prescribed a period of time in which to assert that right. Compliance with the limitation of time prescribed constituted a condition precedent to the enjoyment of the right. It is not material whether the limitation is considered as going to the claimants' right or to the claimants' remedy. The statutory right created expired upon failure to assert the same within the statutory period prescribed. Until the enactment of Laws of 1941, chapter 209, became effective the lapse of three years after the closing of a claim barred a subsequent application for reopening of the claim on the ground of aggravation of injury. Hunter v. Department of Labor and Industries, 190 Wash. 380, 68 P. (2d) 224.

In holding that statutes of limitation which relate merely to the remedy, do not give vested rights, and that the limitation provided for in the act simply defeats the remedy, the court said in Fannin County v. Renshaw, (Tex.), 29 S. W. (2d) 476, 478:

"There is an essential distinction between a statute simply limiting the remedy and a statute which not only bars the remedy but also extinguishes the right to the thing or property in question. In the one case the right is extinguished, while in the other the right still exists but the remedy therefor is taken away."

The author's observation in note to § 285, Crawford, Statutory Construction, that from a practical standpoint there is no real difference whether the right is extinguished or the remedy for the enforcement of the right is barred, is apt.

In Mattson v. Department of Labor and Industries, 176 Wash. 345, 29 P. (2d) 675, we held that an injured workman's rights under the workmen's compensation act being purely remedial, no vested rights were affected by Laws of 1927, chapter 310, which limited to three years the period in which the workman could apply for readjustment of compensation established or terminated prior to the enactment of said limitation despite the fact that Laws of 1923, [fol. 100] chapter 136, in which there was no time limitation within which to apply for readjustment was repealed by Laws of 1927, chapter 310.

True, the legislature, without violation of the guaranties of due process of law, may extend the period of limita-

tions and may make such extension applicable to causes of action which have already accrued. See 12 C. J. 1224. The legislature may also reduce the period and make such reduction applicable to existing causes of action subject, however, to the conditions that it may not entirely take away a right to sue nor so unreasonably shorten the period as practically to take away all remedy. We do not agree that a time limitation prescribed in the statute upon the right created by the same statute is merely a matter of remedy and not of substance. Nor do we agree that the legislature can remove a statutory bar to a cause of action that has already become complete.

In Mattson v. Department of Labor and Industries, *supra*, as in State ex rel Berwind Fuel Co. v. District Court, —— Minn. ——, 164 N. W. 812, it was unsuccessfully contended that, when an act fixed no limitation upon the time within which a workman could recover under the workmen's compensation act (during the life of which the workman sustained an injury), a subsequent act limiting the time to recover under the workmen's compensation act, did not apply to claims that accrued prior to the enactment of the second law.

In Davis & McMillan v. Industrial Accident Commission, —— Calif. ——, 246 Pac. 1046, 46 A. L. R. 1095, the supreme court of California held that the *legislature may extend* the *time for filing claims* under the workmen's compensation act *before* the *time fixed has expired* as there is no vested right in the running of the statute of limitations until it has completely run and barred the action.

[fol. 101] In Mattson v. Department of Labor and Industries, 176 Wash. 345, 29 P. (2d) 675, 293 U. S. 151, the United States Supreme Court held that the 1927 amendment of the compulsory workmen's compensation act of this state limiting the time to three years within which a claim could be reopened for the readjustment of compensation on account of aggravation of the disability did not deny due process of law to one who sustained compensable injuries while a preexisting statute was in effect though the preexisting statute contained no limitation as to the time within which such right might be asserted.

We find no comfort in Mattson v. Department of Labor and Industries, *supra*, for claimants. It is not authority for their contention that a legislative attempt to revive a

statutory right once expired is constitutional. See 16 C. J. S. 685.

In Decker v. Pouvailsmoth, 253 N. Y. 1, 168 N. E. 442, an infant under fifteen years of age was injured in the course of hazardous employment. Notice of injury was promptly given in his behalf but no claim for compensation was filed within a year after the accident, hence the right to claim compensation was barred in the absence of some exception thereto by the statute which provides that the right to claim compensation shall be barred unless within one year after the accident a claim for compensation shall be filed with the commissioner of the department of workmen's compensation. A guardian ad litem was appointed who instituted an action for the infant against the employer to recover damages under the provisions of a statute which it was claimed gave a right of action for breach of statutory duty in employing a child under sixteen years of age. A judgment recovered in the action was reversed on the ground that the workmen's compensation law provided an exclusive remedy. A year later, but nearly five years after the injury, the father of the infant presented a formal [fol. 102] claim for compensation in behalf of claimant. The only question presented was whether the claim was barred by the statute of limitations.

At the time of the accident the workmen's compensation statute provided that no limitation of time would run as against any person who was mentally incompetent or a minor dependent so long as he had no committee or guardian or next friend. The court held that the parent of the child as guardian of the person was the proper person to file the claim for compensation and that the bar of the statute prevailed when the parent neglected to file the claim for compensation within one year after the accident as provided by the statute.

In 1922 (this was after the statute of limitations had run against the claimant) the legislature materially amended (see New York Laws of 1922, chapter 615) and renumbered §116 of the workmen's compensation act. The new section (§115) reads:

"No limitation of time provided in this chapter shall run as against any person who is mentally incompetent or a minor so long as he has no committee or guardian."

In the court's opinion is the statement that the purpose of the legislature was clear and that all minors were brought within the protection of the statute; that "guardian" as used in the statute might reasonably be construed as meaning a guardian appointed by the court and charged with the duty of protecting the property interest of his ward.

"Such is the meaning of the word as used in Workmen's Compensation Law, §16, sub. 2, providing that the board may in its discretion require the appointment of a guardian for the purpose of receiving the compensation of a minor child."

The court further stated that such a statute might be made retroactive without impairing any constitutional rights of the employees but that the legislature had not indicated that the amended act should apply to cases where [fol. 103] the statute had already run, hence

"The court may not give a retroactive effect to a statute to revive claims already barred under the old section unless the legislative purpose is defined by express language or by necessary inference."

Laws of 1927, Chapter 709, of the laws of New York was enacted for the relief of claimant Decker and was intended to revive his claim. The statute authorized Decker to file a claim for compensation under the workmen's compensation law for injuries sustained in 1919 notwithstanding the failure to file his claim within the time prescribed by the workmen's compensation statute. The court held that the foregoing act for the relief of claimant Decker denied to the employer equal protection of the laws by singling out one of a class for special burdens and obligations and that one person should not be subjected to liability from which all others in like circumstances are exempted.

In Peeples v. Hayes, 4 Wn. (2d) 253, 104 P. (2d) 305, a debtor gave alleged preference in 1930 and again 1933. In 1937 a receiver was appointed who brought suit in 1938 in compliance with the statute which required that such suit must be instituted within six months from the date of the application for his appointment. The trial court held that the action was barred by statute of limitations prior to the date of the appointment of the receiver, who insisted that the statute (Rem. Rev. Stat., §5831-1) which provided for

suit to be commenced within six months after the application for appointment of receiver was exclusive and permitted the action.

We affirmed the judgment, agreeing with the trial court that while the statute under which the receiver was appointed created both the right and a bar to its enforcement yet that statute did not have the effect of reviving a cause of action which had already been barred by a statute of [fol. 104] limitations; that is, the statute did not create a new cause of action in the receiver but merely authorized him to assert any claim which was in existence at the time of his appointment.

By Laws of 1923, chapter 28, Remington 1927 (Sup.) §159, the legislature plainly expressed in the following language an intention to revive a claim barred by ordinary general statute of limitations:

"Limitation of Actions

"An Act relating to limitation of actions and the accrual thereof and applying to actions now barred as well as those not barred, and amending section 159 of Remington's Compiled Statutes * * *

"An action upon a statute for penalty or forfeiture, where an action is given to the party aggrieved, or to such party and the state, except when the statute imposing it prescribed a different limitation: Provided, however, The cause of action for such penalty or forfeiture, whether for acts heretofore or hereafter done, and regardless of lapse of time or existing statutes of limitation, or the bar thereof, even though complete, * * * and such liability, whether for acts heretofore or hereafter done, and regardless of lapse of time or existing statutes of limitation, or the bar thereof, even though complete, shall exist and be enforcible * * *"

In Herr v. Schwager, 145 Wash. 101, 258 Pac. 1039, cited by claimants in the cases at bar in support of their position, we held that the foregoing statute of limitations as to certain actions after the limitation had run operated on the remedy only and did not affect any vested right. We followed Campbell v. Holt, 115 U. S. 620 for the reason that the liability of defendants for diverting the assets of an insolvent corporation to the prejudice of the rights of a creditor of the corporation existed at the common law.

Danzer & Co. v. Gulf & Ship Island Railroad Co., 268 U. S. 633, is decisive of the question in the cases at bar and distinguishes Campbell v. Holt, 115 U. S. 620, which, like Herr v. Schwager, *supra*, involved a common law cause of action and ordinary statute of limitations.

In Campbell v. Holt, *supra*, the legislature of the state [fol. 105] of Texas repealed an ordinary statute of limitations under which the plaintiff's remedy at common law on contract had been barred. It was held by a divided United States Supreme Court that the removal of the bar and entry of judgment against defendants did not deprive them of their property without due process of law. There is no distinction in principle between Campbell v. Holt, *supra*, which has been repudiated by a majority of appellate courts, and Herr v. Schwager, *supra*.

In Danzer & Co. v. Gulf & Ship Island Railroad Co., *supra*, the interstate commerce act created a right against a railroad in favor of one who was damaged by the railroad's misrouting of a shipment. The act provided that all complaints for recovery of damages should be filed within two years from the time the cause of action accrued and not afterward. The United States supreme court held that the right of a shipper to an award of damages resulting from misrouting of his goods by a carrier was both created and limited by the interstate commerce act, therefore the lapse of time not only barred the remedy but also destroyed the liability of defendant to plaintiff. The right in that case, as in the cases at bar, was a statutory right which had expired therefore the legislative branch of government could not revive that right. The court said:

"We need not re-examine the doctrine of *Campbell* v. *Holt*, 115 U. S. 620, as it is plain that case does not apply. That was an action on a contract for the recovery of money. By a state statute of limitations, the right of action had been barred. The statute was repealed before the action was commenced. It was held that the action could be maintained and that such repeal did not deprive the debtor of his property without due process of law in violation of the Fourteenth Amendment. The decision rests on the conception that the obligation of the debtor to pay was not destroyed by lapse of time, and that the statute of limitations related to the remedy only, and that

the removal of the bar was not unconstitutional. The opinion distinguishes the case from suits to recover real and personal property. That case belonged to the class where statutory provisions fixing the time within which suits must be brought to enforce an existing cause of action are held to apply to the remedy only. But such provisions sometimes constitute a part of the definition of a [fol. 106] cause of action created by the same or another provision, and operate as a limitation upon liability.

Herr v. Schwager, *supra*, and Campbell v. Holt, *supra*, upon which claimants rely, are not in point, hence it is not material to the cases at bar whether they are correctly decided.

In Bussey v. Bishop, 169 Ga. 251, 150 S. E. 78, 67 A. L. R. 287, in affirming a judgment which set aside an award in favor of claimant in a proceeding under the workmen's compensation statute the court held, under one of the provisions of the constitution of that state that no retroactive law shall be passed, that the legislature can not revive a right of action which was barred by the statute of limitations in existence prior to the passage of the reviving act. Particularly pertinent is the following language of the opinion:

"Most of the decisions which hold contrary to the ruling that the Legislature cannot revive a cause of action barred by the statute of limitations are based upon the ruling made in Campbell v. Holt, supra, in which a distinction was made between a statutory bar operating to invest persons with title to property, and a bar which constitutes merely a defense to a personal demand. Mr. Justice Miller, who delivered the opinion of the majority in that case gave the following reason for such distinction.

" 'We understand very well what is meant by a vested right to real estate, to personal property, or to incorporeal hereditaments. But when we got beyond this, although vested rights may exist, they are better described by some more exact term, as the phrase itself is not one found in the language of the Constitution. We certainly do not understand that a right to defeat a just debt by the statute of limitations is a vested right, so as to be beyond legislative power in a proper case.'

"The reply to this contention by Mr. Justice Bradley, who dissented, and with whom Mr. Justice Harlan concurred, seems to be unanswerable. In his dissent Justice Bradley said:

" 'Now, an exemption from a demand, or an immunity from prosecution in a suit, is as valuable to the one party as the right to the demand or to prosecute the suit is to the other. The two things are correlative, and to say that the one is protected by constitutional guaranties and that the other is not seems to me almost an absurdity. One right is as valuable as the other. My property is as much imperiled by an action against me for money as it is by an action against me for my land or my goods. It may involve and sweep away all that I have in the world. Is not a right of defense to such an action of the greatest value to me? If it is not property in the sense of the Constitution, then we need another amendment to that instrument. But it seems to me that there can hardly be a doubt [fol. 107] that it is property. The immunity from suit which arises by operation of the statute of limitations is as valuable a right as the right to bring the suit itself. It is a right founded upon a wise and just policy. Statutes of limitation are not only calculated for the repose and peace of society, but to provide against the evils that arise from loss of evidence and the failing memory of witnesses. It is true that a man may plead the statute when he justly owes the debt for which he is sued; and this has led the courts to adopt strict rules of pleading and proof to be observed when the defense of the statutes is interposed. But it is, nevertheless, a right given by a just and politic law, and, when vested, is as much to be protected as any other right that a man has. The fact that this defense pertains to the remedy does not alter the case. Remedies are the life of rights and are equally protected by the Constitution. Deprivation of a remedy is equivalent to a deprivation of the right which it is intended to vindicate, unless another remedy exists or is substituted for that which is taken away. This court has frequently held that to deprive a man of a remedy for enforcing a contract is itself a mode of impairing the validity of the contract. And, as before said, the right of defense is just as valuable as the right of action. It is the defendant's remedy. There

is really no difference between the one right and the other in this respect.'

"We can see no valid reason why a claim which is barred by the statute of limitations can be revived and restored by an act of the Legislature in the same jurisdiction. This is especially true, as we have shown, where the statute creating the claim distinctly provides that the claim shall be forever barred, if not filed with a given tribunal within the period of limitation named in the statute. The requirement that the claim for compensation shall be filed with the Industrial Commission within one year after the accident is an essential ingredient, and the right ceases and terminates where no action is so commenced at the expiration of that time. Where a statute gives a new right of action not existing at common law and prescribed the time within which it may be enforced, the time so prescribed is a condition to its enforcement, an element in the right itself, and the right fails with the failure to apply for relief within the allotted time."

See Krause v. Rarity, —— Cal. ——, 293 Pac. 62, 77 A. L. R. 1327, and Annotations 36 A. L. R. 1316, et seq., on the question of the power of legislature to revive a right of action barred by limitation. See 34 Am. Jur. pp. 33-39, §§ 27-35, on the subjects of modification or repeal of statute of limitation, enlarging of statutory period, suspension of operation of statute, retrospective statutes, and power of legislature to revive an action which has become barred by statute of limitation.

Claimants insist that as the statute in question is an exercise of the police power of the state it is not violative of constitutional provisions relating to due process and [fol. 108] the equal protection of the laws. If an enactment is a valid exercise of the police power it, as stated in Sutherland, Statutory Construction, 3rd edition, vol. 2 § 2203, "does not lack due process, nor are contractural obligations violated."

While the police power is an attribute of sovereignty which exists without express declaration, a limitation upon it is that it must not violate any direct or positive mandate of the constitution. She v. Olson, 185 Wash. 143, 186 Wash. 700, 53 P. (2d) 615, 59 P. (2d) 1183, 111 A. L. R. 998.

The police power is not a universal solvent by which all constitutional guaranties and limitations can be loosened and set aside, regardless of their clear and plain meaning, nor is it a substitute for those guaranties. The exercise of the police power is limited in that it may not unreasonably limit rights guaranteed by the federal and state constitutions. The constitutional guaranty of the right of property protects it from unjustifiable impairment or abridgment by legislative edicts.

"While it is difficult, if not impossible, to define precisely the limits of the police power, there must in the very nature of things be some limit to it; for otherwise the guaranties of written constitutions would be little more than mere precatory and directory suggestions without force or life, affording to the citizen only a false and illusory protection against the invasion of his rights by the state, and his security would depend not upon constitutional guaranties, but upon the will of the state in exercising an unlimited police power." Goldman v. Crowther, 147 Md. 282, 128 Atl. 50, 38 A. L. R. 1455.

The workmen's compensation act, as stated above, is in derogation of the common law and all rights of injured workmen thereunder are statutory. Rem. Rev. Stat. §7673. The amount allowed under the act upon a claim is charged to the employer's cost experience as provided by the statute and the claim is ultimately paid, to a large extent, by such employer through those resultant increased premiums. Rem. Rev. Stat., §7676; Mud Bay Logging Co. v. Department of Labor and Industries, 189 Wash. 285, 64 [fol. 109] P. (2d) 1054, 193 Wash. 275, 75 P. (2d) 579. See, also, St. Paul & Tacoma Lumber Co. v. Department of Labor and Industries, 119 Wash. Dec. 682, —— P. (2d) ——.

State v. Vinther, 176 Wash. 391, 29 P. (2d) 693, State ex rel. Davis-Smith Company v. Clausen, 65 Wash. 156, 117 Pac. 1101, 37 L. R. A. (N. S.) 466, and Mountain Timber Company v. Washington, 75 Wash. 581, 135 Pac. 465, 243 U. S. 237, are cited in support of the argument that the fund out of which the claims of workmen are paid are license taxes exacted of employers for the privilege of engaging in industries, therefore the legislature may, and it has, constitutionally removed the bar of the three-year statute of limitations by enactment of the five-year statute.

All that we held in State v. Vinther, *supra*, was that the state in suing for the benefit of the accident fund, under one of the provisions of the workmen's compensation act, on an assigned claim for the death of a workman acted in its sovereign capacity and not for the benefit of private individuals, therefore the statute of limitations could not run against the sovereign state. It is true that in the course of our opinion we indulged in gratuitous observations concerning the character of the accident fund but that language was not necessary to our decision and should not have appeared in the opinion. The same criticism may be justly leveled at our opinions in State ex rel. Davis-Smith Company v. Clausen, *supra*, and Mountain Timber Company v. Washington, *supra*. A careful examination of the three cases cited will convince an understanding reader that the basis of the decision in each of the three cases was not that stated by claimants in the cases at bar.

The contributions paid by the various employers into the accident fund are not license taxes exacted of employers for the mere privilege of engaging in business. The con- [fol. 110] tributing employers have such a vested right or interest in the fund created by their contributions as to entitle them to an appeal to the courts from the department's award to a claimant. The employer has such a material interest in that fund that reviewing courts, although appealing employer may not supersede the department's award, will suspend the operation of the department's order making the award pending disposition of that appeal from the order to the superior court and from the judgment of the superior court to this court. See Mud Bay Logging Co. v. Department of Labor and Industries, *supra*, in which we held in a seven to two *en banc* decision that the contributions paid by the various employers into the accident fund were not taxes exacted from employers for the privilege of engaging in business. In State ex rel. Crabb v. Olinger, 196 Wash. 308, 82 P. (2d) 865, we refused to recede from that position and in St. Paul & Tacoma Lumber Co. v. Department of Labor and Industries, 119 Wash. Dec. 682, — P. (2d) —, we again stressed our prior holdings that an employer contributing to the accident fund has a material interest in that fund, a vested right therein of which he may not be deprived without due process of law.

In Danzer & Co. v. Gulf & Ship Island Railroad Co., *supra*, the United States Supreme Court held that a legislative attempt to revive a statutory right, such as is in-

volved in the cases at bar, once expired is unconstitutional. There is no respectable authority contrary to that decision.

The warning voiced in dissenting opinion of the late Chief Justice Chadwick in Kuehl v. Edmonds, 91 Wash. 185, 157 Pac. 850, is as challenging and the language employed as apt in these parlous days as when uttered in 1916. In pleading for stability, a government of laws and not of men, that great jurist said:

[fol. 111] "It (the majority opinion) will encourage those who, in these times of shifting sentiment, say that some courts never make a precedent and never follow one."

The question presented is whether a cause of action (logically, there is no difference whether the right is extinguished or the remedy for the enforcement of the right is barred) once barred by a statute of limitations can be revived or the right of defense to an action when once acquired can be affected by a subsequent amendment or repeal of the limitation statute.

I am still of the view that the right to set up the bar of such a statute is a vested right which can not be taken away by legislation as it would be deprivation of property without due process of law. The majority opinion invades the right of the employer to whom this court has given the right of appeal in this class of cases. Only by reason of his interest in the fund may the employer be granted the right of appeal.

There is no respectable authority contrary to Danzer & Company v. Gulf & Ship Island Railroad Co., *supra*, in which the United States Supreme Court held that a legislative attempt to revive a statutory right, such as is involved in the case at bar, once expired, is unconstitutional.

The *raison d'etre* for the present indefensible position of the majority may be, as argued by one of the members of this court, "The human element," (change of judicial personnel) and probably the desire of that new personnel to favor, "in view of the social aspects (the Lorelei to which we have too long listened and which is luring the Ship of State on to the reefs) of the entire legislation," one class over another. To that program of inequality and legal instability I can not subscribe.

The judgments in the Lane and Rowley cases should be [fol. 112] affirmed. The judgment in the Moore case should be reversed.

Millard, J.

[fol. 113] IN SUPREME COURT OF WASHINGTON

No. 29541. En Banc

GANGE LUMBER COMPANY, a Corporation, Plaintiff and Appellant,

v.

RALPH ROWLEY and DEPARTMENT OF LABOR AND INDUSTRIES OF THE STATE OF WASHINGTON, Defendants and Respondents.

OPINION—Filed January 27th, 1945

As stated in appellant's brief, this is the second time this cause has been before this court. The action as originally commenced before the Department of Labor and Industries, was entitled Ralph Rowley, plaintiff, v. Department of Labor and Industries, defendant, Gange Lumber Company, employer.

The above proceeding was commenced by filing with the department on or about July 30, 1937, a report of accident by Ralph Rowley, claimant, and Gange Lumber Company, employer. The original claim was closed March 1, 1938. On March 13, 1943, Mr. Rowley made an application to reopen his claim. On March 24, 1943, the department, without passing on the merits of the application, entered an order to the effect that it was without authority to take further action on the claim, as more than three years had expired since the original claim was closed. Mr. Rowley then appealed to the joint board for review of the order of March 24, 1943, made by the supervisor, contending that under Rem. Supp. 1941, § 7679 (h), he had five years from the effective date of the act last mentioned, to apply for readjustment of his original claim on the ground of aggravation.

On April 5, 1943, the joint board entered an order affirming the action of the department. On April 19, 1943, Mr. [fol. 114] Rowley appealed from the order of the joint board to the superior court of Pierce county. On October 27, 1943, the employer, Gange Lumber Company, filed in superior court a motion to dismiss the cause and appeal on the following grounds: (1) That the order of the joint board dated April 5, 1943, affirming the order of the supervisor dated March 24, 1943, denying the plaintiff's (Mr. Row-

ley's) application to reopen his claim on the ground that said application and the reopening of said claim were barred by the provisions of Rem. Rev. Stat., § 7679 (h), being Laws of 1911, chapter 74, § 5 (h), as amended by Laws of 1927, chapter 310, § 4, is in accordance with law. (2) That under the provisions of Rem. Rev. Stat., § 7679 (h), plaintiff's right, if any, to reopening of his claim and additional compensation, on the alleged ground that his disability became aggravated after his claim was closed on March 1, 1938, expired by lapse of time prior to March 19, 1943, the date he filed his application for reopening, and said order of the joint board is therefore in accordance with law. (3) That said order of the joint board, rejecting plaintiff's contention that he was authorized by Laws of 1941, chapter 209, §1, referred by petition to the people and adopted by them as referendum No. 22 on November 3, 1942, which became effective on December 3, 1942, to apply for a reopening of his claim for aggravation as aforesaid, is in accordance with law. (4) That if Laws of 1941, chapter 209, § 1, adopted by the people as aforesaid, is construed as urged by plaintiff, such law is in violation of Art. I, § 3, and Art. I, § 23, of the constitution of the state of Washington, and is void. (5) That if said Laws of 1941, chapter 209, § 1, adopted by the people as aforesaid, is construed as urged by plaintiff, said law is in violation of Art. I, § 10, clause 1 of the constitution of the [fol. 115] United States of America, and of the fourteenth amendment to the constitution of the United States of America, and is void.

On December 10, 1943, the superior court for Pierce county made and entered an order dismissing Rowley's appeal, and affirming the order of the department closing Rowley's claim. From the order dismissing the appeal, Rowley duly appealed to this court. On appeal to this court, the Rowley case was consolidated with I. C. Lane v. Department of Labor and Industries, No. 29288 of this court, I. C. Lane v. Department of Labor and Industries, No. 29289, and John Moore v. Department of Labor and Industries, No. 29291, and the above appeals will be referred to as Lane v. Department of Labor and Industries, reported in 121 Wash. Dec., 395, 151 P. (2d) 440. In order that it may be understood what questions were before the court, and de-

cided by it on the appeals last above referred to, we quote from the opinion:

"This appeal involves the claims of injured workman for compensation for aggravation of injuries and for which they had previously received awards. In the two cases of I. C. Lane and in that of Ralph Rowley, the court affirmed the orders of the department of labor and industries disallowing the claims on the ground that they had not been made within the time limited by law. In the case of John Moore, the court reversed the order of the department disallowing his claim upon the same ground. On appeal to this court, the cases were consolidated. The parties to the appeal will be referred to as the claimants, the employers, and the department.

"*The questions to be determined are whether the act of 1941 applies to barred claims, and, if so, is it constitutional.*" (Italics ours.)

The opinion concludes as follows:

"The act of 1941 before us is so plain and all-inclusive in its wording as not to need construction. It applies to all applicants for readjustment whose compensation has been established or terminated, and in passing it the legislative authority has encountered no constitutional inhibitions.

"The judgments in the Lane and the Rowley cases are reversed, and the judgment in the Moore case is affirmed."

The remittitur from the court went down, and was filed in the superior court for Pierce county on October 17, 1944. Thereafter and on October 19, 1944, said court entered [fol. 116] judgment on the remittitur in the case of Ralph Rowley v. Department of Labor and Industries, and Gange Lumber Company, employer. Said judgment vacated the former judgment entered by the Superior Court, and reversed the order of the joint board, and remanded the cause to the department to consider upon its merits, after the introduction of evidence at an appropriate hearing.

On November 25, 1944, the department reopened the claim, and entered an order allowing additional compensation to Mr. Rowley. The employer, Gange Lumber Company, filed its application for rehearing before the joint board, and on November 27, 1944, the joint board, after a

hearing, entered an order denying the employer's application for a rehearing, stating as its reason therefor, in part as follows:

"It Is Hereby Ordered, That whereas it appears to the board that this claim has heretofore been appealed to the supreme court of the state of Washington and that said court held upon said appeal, in *Lane v. Department of Labor and Industries*, 121 Wash. Dec. (No. 11) 395, that the claimant herein was entitled to a consideration of his application for reopening on its merits under Laws of Washington, 1941, Chapter 209, Section 1, and that said law was not in violation of the 14th Amendment to the constitution of the United States as contended by the employer herein, and the joint board being advised in the premises, and you being hereby notified, now:

"It Is Hereby Ordered that the application of the employer, Gange Lumber Company for a rehearing of the order of the supervisor of Industrial insurance dated November 25, 1944, be and the same is hereby denied."

The employer, Gange Lumber Company, duly appealed from the order of the joint board, to the superior court of Pierce county, and on December 5, 1944, filed in the superior court its motion for judgment on the record, and on the same date Ralph Rowley and the department of labor and industries filed motions for judgment of dismissal of the appeal of the Gange Lumber Company.

On December 5, 1944, the superior court entered an order granting the motions of Ralph Rowley and the department, and entered a judgment of dismissal. This judgment recited in part:

[fol. 117] "• • • and it appearing to the court that no issue of fact has been or is raised herein and that the only issue of law herein is whether Laws of Washington, 1941, chapter 208, § 1, insofar as it permits the reopening of the industrial insurance claim of the defendant Ralph Rowley and the award made to said defendant upon such reopening by the order herein of the Supervisor of Industrial Insurance dated November 25, 1944, and the charging of the amount of said award to the cost experience of the plaintiff Gange Lumber Company under the workmens' compensation act of the state of Washington, constitutes a taking of the property of the plaintiff Gange Lumber Com-

pany without due process of law and denies said plaintiff the equal protection of the laws in violation of the 14th amendment to the constitution of the United States; and

"It appearing further to the court that this cause has heretofore been before the court in its cause No. 89046 wherein judgment was entered on December 10, 1943, from which judgment the defendant Ralph Rowley appealed to the supreme court of Washington; that said appeal was consolidated with three other causes upon appeal before said court and was decided in *Lane v. Department of Labor and Industries*, 121 Wash. Dec. (No. 11) 395; that the aforesaid issue of law was raised between the parties hereto in said appeal and was decided therein by said supreme court adversely to the present contention of the plaintiff herein; and

"The court being of the opinion that said decision of the supreme court of Washington is a determination of the aforesaid issue of law which is conclusive upon this court in favor of the defendants and against the plaintiff, and the court being advised in the premises,

"It Is Therefore Ordered, Adjudged and Decreed, that the aforesaid motion of the plaintiff for judgment upon the record be, and the same is hereby denied and that the motions of the defendants Ralph Rowley and Department of Labor and Industries of the state of Washington be, and each thereof is hereby granted to all of which the plaintiff excepts and its exception is allowed; and

"It Is Further Ordered, Adjudged and Decreed, that this cause and the plaintiff's appeal herein be, and the same are hereby dismissed with prejudice; that the aforesaid order of the joint board dated November 27, 1944, be, and the same is hereby confirmed."

From the above judgment, the Gange Lumber Company has appealed to this court. Appellant states in its brief that the questions to be determined on this appeal are:

"1. Did Laws of Washington chapter 209, § 1, amending the workmens' compensation act by changing the period for applying to reopen a claim under said act from three to five years, operate to permit reopening of respondent Rowley's claim notwithstanding that his right to apply for such reopening had become barred under the amended law?"

Following the above question in appellant's brief, it states: "Affirmed by the superior court upon the authority of Lane et al. v. Department of Labor and Industries, 121 Wash. Dec. (No. 11) 395."

[fol. 118] The questions continue as follows:

"2. Is said Chapter 209, if it applies as interpreted by the superior court, in violation of the fourteenth amendment to the constitution of the United States and of Article 1, § 3 of the constitution of the state of Washington?"

Following this question in appellant's brief, it states: "Negatived by the superior court upon authority of Lane et al v. Department of Labor and Industries, *supra.*"

As hereinbefore set out and shown by the record, both of the above questions of law were before this court in Lane et al. v. Department of Labor and Industries, *supra*, and specifically decided therein contrary to the contention of the Gange Lumber Company as there made, and contrary to its contentions on this appeal. As this appeal involves the same parties, the same subject matter, and the same questions of law as were involved in the Lane case, *supra*, the decision in that case on the legal questions here raised, became the law of this case, and therefore when this cause came before the superior court it was bound by the law of the case as decided on the former appeal, and as no issue of fact was involved, but only the same issues of law as on the former appeal, the trial court had no alternative other than to dismiss this action. Camas v. Kiggins, 120 Wash. 40, 206 Pac. 951; Morehouse v. Everett, 121 Wash. 399, 252 Pac., 157; Epley v. Hunter, 157 Wash. 333, 289 Pac. 27.

In the case last cited, we quoted from 2 R. C. L. p. 223, § 187, as follows:

"It may be stated generally that a court of review is precluded from agitating questions which were propounded, considered, and decided on a previous review; the decisions agree that, as a general rule, when an appellate court passes upon a question and remands the cause for further proceedings, the question there settled becomes the 'law of the case' upon a subsequent appeal; the only mode for re-

viewing the decision on the prior appeal being by a motion for a rehearing."

[fol. 119] No question of fact having been raised on this appeal, the only issues of law raised herein having been decided adversely to appellant's contention on the former appeal, it follows that the trial court correctly dismissed this action, as the trial court was bound by the law of the case as established by this court on the former appeal.

For the reasons herein assigned, the judgment of the trial court is affirmed.

Jeffers, J.

We concur: Beals, C. J.; Steinert, J.; Blake, J.; Robinson, J.; Mallery, J.; Grady, J.

CONCURRING OPINION

I concur solely on the ground that our opinion or decision in Lane v. Dept. of Labor, *supra*, is the law of the case at bar. I am still of the view that this court grossly erred in its opinion in the Lane case. The constitutional question appellant seeks to raise may be presented in another case in which a different party than in Lane case brings the question here.

Millard, J.

I concur: Simpson, J.

[File endorsement omitted.]

[fol. 119a] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

No. 29541

PETITION FOR APPEAL AND WRIT OF SUPERSEDEAS—Filed February 28, 1945

To the Honorable Walter B. Beals, Chief Justice of the Supreme Court of the State of Washington:

Your petitioner, Gange Lumber Company, a corporation, respectfully shows:

Your petitioner is the appellant in the above entitled cause in which a final judgment was entered by the Supreme Court of the State of Washington on February 19, 1945.

The appellee, Ralph Rowley, having been injured in extra-hazardous employment within the State of Washington on July 13, 1937 while in the employ of your petitioner, filed his claim with the appellee Department of Labor and Industries of the State of Washington for compensation under the Workmen's Compensation Act of said State. Said claim was allowed, compensation was paid thereon for the permanent partial disability suffered by the appellee Rowley as a consequence of his said injury and the claim was closed by final order of the appellee Department of Labor and Industries of the State of Washington dated March 9, 1938, from which order no appeal was taken.

From the year 1927 until December 3, 1942, the said Workmen's Compensation Act provided that an application to reopen a claim and for additional compensation on ac-[fol. 119b] count of aggravation of disability occurring after closure of the claim might be filed with the appellee Department of Labor and Industries at any time within three years after such closure, but not thereafter. On December 3, 1942 there became effective an Act changing the said limitation period from three years to five years, being Laws of Washington, 1941, Chapter 209, Section 1, page 633 (Remington's Revised Statutes of the State of Washington, 1941 Supplement, Section 7679 (h), page 310). Subsequent to December 3, 1942, that is, on March 19, 1943, the appellee Ralph Rowley, although he had failed to apply for reopening of his claim within three years after the date of closure thereof, filed his application with the appellee Department of Labor and Industries for reopening of his claim and for additional compensation on account of an alleged aggravation of his disability, contending that said amendatory statute operated retroactively to permit reopening of a claim notwithstanding that the right to apply for reopening thereof had become barred under the earlier law. Said application was rejected by order of the appellee Department of Labor and Industries on the ground that it was barred by limitation of time, from which order the appellee Ralph Rowley appealed to the Superior Court of the State of Washington for Pierce County. The appellee Department of Labor and Industries appeared in said Court upon said appeal and, as provided by the laws of said State, your petitioner, Gange Lumber Company, appeared upon said appeal and filed its motion for dismissal thereof on the ground, among others, that said Laws of Washington, 1941,

Chapter 209, Section 1, if construed as urged by the appellee Ralph Rowley, was in violation of the Fourteenth Amendment to the Constitution of the United States of America in its application to your petitioner.

The said Superior Court for Pierce County granted your petitioner's said motion and entered judgment dismissing [fol. 119c] said appeal to said court, from which judgment the appellee Ralph Rowley appealed to the Supreme Court of the State of Washington where the cause was consolidated for consideration and decision with three other causes in said Court involving the same issues.

On August 30, 1944, the Supreme Court of the State of Washington filed its opinion and decision in said consolidated causes, holding that said Laws of Washington, 1941, Chapter 209, Section 1, by reviving claims barred under the earlier law, was not in violation of the Fourteenth Amendment to the Constitution of the United States as urged by your petitioner and directing entry of judgment reversing the aforesaid judgment of the Superior Court.

Within due time your petitioner filed its petition for rehearing of said decision. Said petition was denied on October 4, 1944, and judgment was entered in said consolidated causes by the Supreme Court of the State of Washington in accordance with its said opinion and decision. Pursuant to the remittitur of said Supreme Court, a judgment was entered on October 19, 1944 by said Superior Court, reversing the aforesaid order of the appellee Department of Labor and Industries and directing that the appellee Ralph Rowley's application for reopening of his claim and for additional compensation be considered upon its merits by said appellee Department of Labor and Industries. Said application was thereafter so considered and, upon a finding by said Department that the disability of said Rowley had become aggravated after his claim was originally closed, further compensation was allowed to him by order of said Department dated November 27, 1944, from which order your petitioner duly appealed to said Superior Court for Pierce County. Thereafter, on December 5, 1944, a final judgment was entered by said Superior Court dismissing your petitioner's appeal to said Court with prejudice, [fol. 119d] from which judgment your petitioner duly appealed to the Supreme Court of the State of Washington which Court, by its opinion and decision filed on January

27, 1945, directed entry of judgment affirming said judgment of the Superior Court for Pierce County.

Within due time your petitioner filed its petition for rehearing of said decision of the Supreme Court of the State of Washington. Said petition was denied on February 16, 1945, and on February 19, 1945, a final judgment was entered by the said Supreme Court affirming the aforesaid judgment dated December 5, 1944 of the Superior Court for Pierce County.

The said Supreme Court of the State of Washington is the highest court of said State in which a decision in said suit can be had. In said suit there is drawn in question the validity of a statute of the State of Washington on the ground that said statute, in its application to your petitioner, is repugnant to, and in violation of the Fourteenth Amendment to the Constitution of the United States of America, and the decision of the highest Court of the State of Washington is in favor of its validity, notwithstanding your petitioner's contention that said statute violates the Fourteenth Amendment to the Constitution of the United States.

Therefore in accordance with Section 237a of the Judicial Code (28 U. S. C. A., Section 344), and in accordance with the Rules of the Supreme Court of the United States, your petitioner respectfully shows that this case is one in which, under the legislation in force when the Act of January 31, 1928, was passed, to-wit, under Section 237a of the Judicial Code (28 U. S. C. A., Section 344), a review could be had in the Supreme Court of the United States on a writ of error as a matter of right. The errors upon which your petitioner claims to be entitled to an appeal are more fully set forth in the assignment of er- [fol. 119e] rors filed herewith, pursuant to Rules 9 and 46 of the Rules of the Supreme Court of the United States, and there is likewise filed herewith a statement as to the jurisdiction of the Supreme Court of the United States, as provided by Rules 12 and 46 of the Rules of the Supreme Court of the United States.

Wherefore, your petitioner prays for the allowance of an appeal from the Supreme Court of the State of Washington, the highest Court of said State in which a decision in this case can be had, to the Supreme Court of the United States in order that the aforesaid decision and final judg-

ment of said Supreme Court of the State of Washington may be examined and reversed, and also prays that a supersedeas and stay of execution of said final judgment pending such appeal be granted and prays also that a transcript of the records, proceedings and papers in this cause, duly authenticated by the Clerk of the Supreme Court of the State of Washington under his hand and the seal of said Court, may be sent to the Supreme Court of the United States as provided by law, and that an order be made adjudging the security to be required of the petitioner and that the supersedeas and cost bond tendered by the petitioner be approved.

Dated this 28th day of February, 1945.

John Ambler, T. J. Hanify, Attorneys for Appellant and Petitioner, Gange Lumber Company.

Service of the foregoing Petition for Appeal and Writ of Supersedeas this 28th day of February, 1945 is hereby acknowledged. Jay C. Allen, Charles R. Carey, Attorneys for Appellee Ralph Rowley. Smith Troy, Attorney General of the State of Washington; R. A. Moen, Assistant Attorney General of the State of Washington, Attorneys for Appellee Department of Labor and Industries of the State of Washington.

[File endorsement omitted.]

[fol. 119f] IN THE SUPREME COURT OF THE UNITED STATES

No. 29541

[Title omitted]

ASSIGNMENT OF ERROR—Filed February 28, 1945

The appellant assigns the following errors in the records and proceedings in this cause:

1. The Supreme Court of the State of Washington by its judgment erred in holding that Laws of Washington, 1941, Chapter 209, Section 1, insofar as said statute revives appellee's right to apply for reopening of his industrial insurance claim, notwithstanding that said right had become barred and had expired prior to the effective

date of said statute, does not deprive appellant of its property without due process of law or deny appellant the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States of America, and said Court erred in failing to hold that said statute does so deprive appellant of its property and does so deny it the equal protection of the laws.

2. The Supreme Court of the State of Washington by its judgment erred in holding that the removal by said Laws of Washington, 1941, Chapter 209, Section 1, of the bar of limitations to the reopening of Appellee Rowley's said claim affected only said appellee's remedies under the Workmen's Compensation Act of said State and did not [fol. 119-g] affect the substantial rights of appellant, and said Court erred in failing to hold that said removal did affect appellant's substantial rights.

3. The Supreme Court of the State of Washington by its judgment erred in holding that a statute, purportedly enacted in the exercise of a state's police power, viz., Laws of Washington, 1941, Chapter 209, is not subject or subservient to the Fourteenth Amendment to the Constitution of the United States of America.

4. The Supreme Court of the State of Washington by its judgment erred in holding that the contributions or premiums exacted of an employer by the Workmen's Compensation Act of the State of Washington and paid by the employer into the accident fund maintained by the appellee Department of Labor and Industries of said State are a license or excise tax.

5. The Supreme Court of the State of Washington by its judgment erred in affirming the judgment of the Superior Court of the State of Washington for Pierce County, dismissing appellant's appeal from the order of the appellee Department of Labor and Industries of said State allowing additional compensation to the appellee Rowley under said Laws of Washington, 1941, Chapter 209.

6. The Supreme Court of the State of Washington by its judgment erred in failing to reverse said judgment of the Superior Court for Pierce County and in failing to render judgment dismissing the appellee Rowley's appli-

cation for reopening of his claim and for additional compensation.

Wherefore, on account of the errors hereinabove assigned, appellant prays that the judgment of the Supreme Court of the State of Washington, dated the *19th* day of February, 1945, in the above entitled cause be reversed and that judgment be rendered in favor of this appellant.

Dated this 28th day of February, 1945.

John Ambler, T. J. Hanify, Attorneys for Appellant Gange Lumber Company — — —.

Service of the foregoing on this 28th day of February, 1945 is hereby acknowledged. Jay C. Allen, Charles R. Carey, Attorneys for Appellee Ralph Rowley. Smith Troy, Attorney General of the State of Washington; R. A. Moen, Assistant Attorney General of the State of Washington, Attorneys for Appellee Department of Labor and Industries of the State of Washington.

[File endorsement omitted.]

[fols. 120-121] Bond on Appeal for $2,000.00 Approved and filed February 28, 1945 omitted in printing.

[fols. 122-125] IN SUPREME COURT OF THE UNITED STATES

No. 29541

[Title omitted]

ORDER ALLOWING APPEAL AND WRIT OF SUPERSEDEAS—Filed February 28, 1945

The petition of Gange Lumber Company, a corporation, the appellant in the above entitled cause, for an order allowing an appeal in the above cause to the Supreme Court of the United States from the judgment of the Supreme Court of the State of Washington and for a supersedeas and stay of execution of said judgment pending such appeal having been filed with the Clerk of this Court and presented herein, accompanied by an Assign-

ment of Errors and Statement as to Jurisdiction, all as provided by Rules 9, 12 and 46 of the Rules of the Supreme Court of the United States, and the record in this cause having been considered, it is hereby

Ordered that an appeal be and it is hereby allowed to the Supreme Court of the United States of America from the final judgment, dated the 19th day of February, 1945, of the Supreme Court of the State of Washington, as prayed in said petition, and that the Clerk of the Supreme Court of the State of Washington shall, within sixty (60) days from this date, make and transmit to the Supreme Court of the United States, under his hand and the seal of said court, a true copy of the material parts of the record herein which shall be designated by praecipe or stipulation of the parties or their counsel herein, all in [fol. 126] accordance with Rule 10 of the Rules of the Supreme Court of the United States; and it is further

Ordered that a supersedeas and stay of execution of said final judgment pending such appeal be and is hereby granted upon filing of the bond hereinafter ordered; and it is further

Ordered that said appellant shall give a good and sufficient supersedeas and cost bond in the sum of Two thousand ($2000.00) Dollars, conditioned that said appellant shall prosecute said appeal to effect and answer all damages and costs if it fails to make its plea good.

Dated this 28th day of February, 1945.

Walter B. Beals, Chief Justice of the Supreme Court of the State of Washington.

Service of the foregoing Order Allowing Appeal and Writ of Supersedeas this 28th day of February, 1945 is hereby acknowledged.

Jay C. Allen, Charles R. Carey, Attorneys for Appellee Ralph Rowley. Smith Troy, Attorney General of the State of Washington. R. A. Moen, Assistant Attorney General of the State of Washington. Attorneys for appellee Department of Labor and Industries of the State of Washington.

[File endorsement omitted.]

[fols. 127-128] Citation in usual form showing service on Jay E. Allen et al., filed February 28, 1945, omitted in printing.

[fol. 129] IN SUPREME COURT OF THE UNITED STATES

No. 29541

[Title omitted]

STIPULATION FOR TRANSCRIPT OF RECORD—Filed February 28, 1945

It Is Hereby Stipulated Between Gange Lumber Company, a corporation, appellant above named, and Ralph Rowley, appellee above named, and Department of Labor and Industries of the State of Washington, appellee above named, by and through their respective counsel, as follows:

That the Clerk of the Supreme Court of the State of Washington is hereby instructed to prepare the record on appeal in the above entitled cause, and that the following papers shall be included in, and shall constitute said record on appeal:

1. Accident Report and Claim for Compensation to the Department of Labor and Industries;

2. Order of Supervisor of Industrial Insurance dated January 25, 1938;

3. Order of Supervisor of Industrial Insurance dated March 9, 1938;

4. Application to Reopen claim filed March 19, 1943;

5. Order of Supervisor of Industrial Insurance dated March 24, 1943;

6. Application to Joint Board of Department of Labor and Industries for Rehearing dated March 26, 1943;

7. Order of Joint Board dated April 5, 1943;

8. Notice of Appeal to Superior Court for Pierce County dated April 19, 1943;

9. Employers' motion to Dismiss Appeal to Superior Court;

[fol. 130] 10. Order of Superior Court Granting Employers' Motion to Dismiss and Judgment of Dismissal dated December 10, 1943;

10a. Notice of Appeal to Supreme Court, January 7, 1944;

11. Appellant's Brief on Appeal (No. 29290):
Title page;
Page 12, lines 1 through 9;
Page 53, lines 1 and 2;
Page 60, lines 1, 2 and 3;
Page 61, lines 8 through 12;
Page 62, line 13, through page 64, line 20;
Page 67, lines 7 through 12;
Page 75, lines 13 through 21.

12. Appellant's Petition for Rehearing (No. 29290):
Title page;
Page 13, lines 6 through 16;
Page 14, line 19, through page 15, line 11;
Page 19, line 11, through line 7;
Page 20, lines 14 through 18;

13. Order, dated October 4, 1944, of Supreme Court of Washington Denying Petition for Rehearing;

14. Judgment of Supreme Court of Washington dated October 9, 1944;

15. Judgment of Superior Court, dated October 19, 1944, on Remittitur of Supreme Court;

16. Order of Joint Board dated October 30, 1944;

17. Report of Physician dated October 28, 1944;

18. Order of Supervisor of Industrial Insurance dated November 25, 1944;

19. Appellant's Petition to Joint Board for Rehearing;

20. Joint Board's Order dated November 27, 1944;

21. Appellant's Notice of Appeal to Superior Court;

22. Appellant's Motion in Superior Court for Judgment on Record;

23. Defendants' motion for Judgment of Dismissal of Appeal to Superior Court;

24. Judgment of Superior Court dated December 5, 1944;

25. Appellant's Notice of Appeal to Supreme Court of State of Washington;

26. Appellant's Assignments of Error (Appellant's Brief, No. 29541, title page, omitting names of counsel, and page 2, line 11, through page 5, line 20);

[fol. 131] 27. Appellant's Petition to Supreme Court of Washington for Rehearing:
Title page, omitting names of counsel;
Page 4, line 17 through page 5, line 10;

28. Order of Supreme Court of Washington denying Petition for Rehearing;
29. Judgment of Supreme Court of Washington dated February 19, 1945;
30. Petition for Appeal to Supreme Court of United States;
31. Assignments of Error;
32. Statement as to Jurisdiction;
33. Bond on Appeal;
34. Statement Directing Attention to Provisions of Paragraph 3 of Rule 12 of Rules of United States Supreme Court;
35. Proof of Service of Papers Required by United States Supreme Court Rule 12;
36. Order Allowing Appeal and Writ of Supersedeas;
37. Citation;
38. Stipulation for Transcript of Record;
39. Clerk's Certificate.

Dated this 28th day of February, 1945.

John Ambler, T. J. Hanify, Attorneys for Appellant. Jay C. Allen, Charles R. Carey, Attorneys for Appellee Ralph Rowley. Smith Troy, Attorney General of the State of Washington, R. A. Moen, Assistant Attorney General of the State of Washington, Attorneys for Appellee, Department of Labor and Industries of the State of Washington.

[File endorsement omitted.]

[fol. 132] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 133] IN THE SUPREME COURT OF THE UNITED STATES

APPELLANT'S STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF PARTS OF THE RECORD TO BE PRINTED—Filed March 23, 1945

Comes now the Appellant and adopts its Assignments of Error as its statement of the points to be relied upon, and represents that the whole of the record as filed is necessary for the consideration of the case, except that the

Clerk is requested to omit the following portions when printing the record herein:

1. Omit the long paragraph on page 27 beginning with the words "This claim was allowed";
2. Omit lines 24 to 31, inclusive, on page 39;
3. Omit all of page 40;
4. Omit all of page 41;
5. Omit all of page 42;
6. Omit lines 1 to 19, inclusive, on page 43.

Dated this 17 day of March, 1945.

T. J. Hanify, John Ambler, Attorneys for Appellant.

Due and timely service of the foregoing "Appellant's Statement of Points to be Relied Upon and Designation of Parts of the Record to be Printed" acknowledged this 17 day of March, 1945.

Jay C. Allen, Charles R. Carey, Attorneys for Appellee Ralph Rowley. Smith Troy, Attorney General of the State of Washington; R. A. Moen, Assistant Attorney General of the State of Washington, Attorneys for Appellee Department of Labor and Industries.

[fol. 133½] [File endorsement omitted.]

[fol. 134] SUPREME COURT OF THE UNITED STATES

ORDER NOTING PROBABLE JURISDICTION—May 28, 1945

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted, and the case is transferred to the summary docket.

Mr. Justice Jackson took no part in the consideration or decision of this question.

Endorsed on cover: File No. 49547. Washington, Supreme Court. Term No. 53. Gange Lumber Company, Appellant, vs. Ralph Rowley and Department of Labor and Industries of the State of Washington. Filed March 30, 1945. Term No. 53, O. T. 1945.